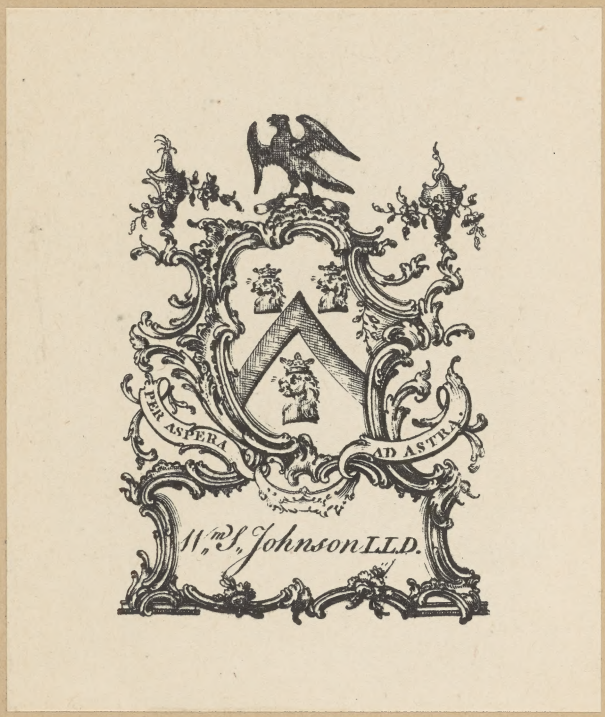
PER ASPERA
AD ASTRA
Wm S. Johnson LL.D.

Executors & Administrators

Preliminary Remarks.

When a man has made a Will & thereby
an Ex^r & dies the Ex^r has charge of the personal estate
& no other than him has a legal title.
And when there is no Will & he dies
a person who is called Adm^r & he obtains
same title. & has nothing to do with Real
est. — & he holds the Prop. a Trustee Heir
personal
no interest in it at all. & if any one
personal Prop^y
does an injury to the Ex^r must sue him & not
same with
the heir & Ex^r & Adm^r. Tis a Max^m in com
venal that no volenti can take a injury
dies & Ex^r = And whenever any construction
will give a volenti a chance, to the injury
& Ex^r — that construction must be accepted

Powers & Adm^r & duties

The Ex^r duty an old & the next
duty of Ex^r is to pay the Legacies, & if there
= a residue the residuary Legatee takes it
& there = one, & if not he takes it himself.
& where the duty of Adm^r as to Intest
Ex^r is the same as duty of Ex^r = & in
case & Adm^r the law has Trusted with certain
persons who shall take the whole, or part of
residue, & the disposal & residue
of the residue, & is found a power & a Trust & there
must & ought to be. Now formerly the Ex^r took

Qu. of Admin. about the whole. Is it contingent when the Law presumes the Ch. had no interest for his Lives? & as the contingency was considered as Life interest but when that is a vested Legacy he has no interest when this fire. But with the Ch. not so for he never pay wages. Ch. had the Ch. held the residuum at Law when there was an Int. Ch. for the altered the Law. & determined that if there was a Legacy given by Will, he shd be considered as a trustee for them who wd have had the Ch. had there been no will & rather they consider the test as being dead intestate as to this residue. But the Legacy must be of some consequence for a Legacy of a mourning cloth &c may pass not be enough. Ch. Ch the imposse when the Ch. as Exors to distribute the residue. But still it may be shewn by parol that that the test intended the Ch. to have the residue notwithstanding the Legacy. for this is an equitable presumption. & parol test may be introduced to rebut an equitable presumption but not a legal one. But as the Law is when there's residuum the Ch. is to have it & it cant be rebutted by parol test but when the presumption is only equitable here.

Clear nothing to do with real est

Ex. & Adm. just Rem. Father Mom relates to Real.
ent, but there is great contrariness in
by law with regard to the dead men
est. With regd to the Case I am am
sorry we must look to the Ls

If there is a
Will the real est vests in Exrs & Adrs
if there is no Will it vests in the heir
& then by the act for injuries done to
the est not so if there is a Ex & Adr

The personal est is the fund
out of wh the Debts are to be paid &
so is the case in our cases. but it is
not liable for simple cont Debts -

But the Credrs are not obliged to call
upon the heir, if they (or Exrs) have a certain rule
as to other Debts as Rent Debts &
must be paid first ie. before simple
cont Debts, But now the inquiry
in the Orig Ln = apparent. for the
real est = must be apply all the Debts
by the way as all simple cont Debts &
the Spec Profs = small but the real est
= large - the heir take all the real est
& the Credrs are excluded. Gen. a Man owes
$20,000 & he has real est to = amt of $40,000
& spec profs to amt of 5,000. here the Credrs will get part
It is remedied in a degree by Ch. by what
is called marshaling the assets. a person
the man dies owing 20-000 dollars & 20,000

Ex. of Hon. Gen. Lands in Florida. A simple contract debt was 10000. A testator by will devised his real estate but he specially did not call it his but charged it with the payment of his debts & the simple contract debts when the heir & devisee was liable. So here the specialty debts might have gone upon the heir but as they did not the simple contract debts came in, but they came in to the aid of the specialty debts, but no further & all round & go - for it would be hearing in upon the Law to go further, but both Courts the Law was not enclosed with or in the system also

So any gentleman of Florida get along with the debts by a Grant in Will a certain quantity of land to be sold for payment of debts - and by this means the heir may be deprived of his estate & this may sometimes be done at Law & also by Ch. Equity a sale for specialty debts; & if they will not take advantage of it the Ch will also in the simple contract debts

So

Here I mention a contribution which I think to be unequitable as to the Testator's lands & to pay debts, that the Will directs certain lands to be sold for payment of debts & the heir can retain no estate, they must be sold

10 W. 439.
2 Wm ~~Bl~~. 416.
3 Ld 341. 1 Ves
61. 1 Vern 411
1 Atk 494. 650.
Co Litt 112 m. 113.
1 Bro Ch. 130. Ld
2 Thurlows arg.
2 Bl 511

Exec[r] & Adm[r] } not entitled all the personal
has been sold, But it has been decided
in this county
that it shall be sold like the Real
is the case the personal is entitled to
the Widow Child &c. Consequently in
the by decision the personal, all but
is into the negroes now that Real
is shall be sold after the personal

If the heir or devisee
did sell the land, he becomes personally liable
but the purchasers title is not disturbed

Real estate
divided into real & personal assets the
real are not liable for debts except under
certain circumstances but the personal
are liable for all debts.

You observe the statute a case in
which it is necessary to go to Ch to get the debts
paid. and in case the testator will not by
the deed he can order the sale, And in
the case of an equity of redemption Ch.
will order it to be sold. & the assets
we are thus mined a called equitable assets
those we are sold by order of law or called
legal assets the diff[s] is that with equitable
assets you resort to merely first & then to
all kind of personal property but with the legal
assets by a kind out to the residue first
&c. If lands are devised to be sold for & by
debts the avails of the land is are entitled to

Ex[r] & Adm[rs] } by Ch, [illegible] is bro[t] in to Ch & the
= laid out to all Sui Juris

It is a rule that
a equitable asst also am[t] to laid to Juris
dic[n] & all the asts = laid by & rank by
the Debts — so that if consequence to how
what a legal asst is. dic[n] not be Jur as to is to
agst. that if he was obliged to go to Ch
to get true asts the also was equit
able, as in case the Ex[r] will not all the Lands
& Ch = affirm to to affirm some one to
do it — & so with the rule of a equity
of redemp[n]. But now the Land is
devised to sold & the Ex[r] sells them with
Limitation & the law at many — now asst
legal a equitable asst? but to arises the
dis[te], Bond. decision has made
the equit[e] asst. the rule the = rule
also, but that when you and be compld
to go to Ch shd there be a dis[te]. & the
Legatee asserts to sell and not to = then
asst equitable
And when you can get the Prop[t] into
your hand by your to law the Prop =
legal asst. it self.

The great diff[e] between the Lands
& Stock & the C L with respect to & mgt
is, that the Stock has no priority the Lands to
& pay of Debts — but the Lands are not to be
sold until the Per Prop is all sold — &
this the real est does not rest in the Ex[r]

Exec^rs & Adm^rs Else on the Sum who has an est
is not liable to be deposited - - A writ to
case for necessity of selling the land &c
is made to the Ct of Probate who stays the
sale for the sum - & the same sum
at the Ct sittings one who by order
that land to be sold - This is the Law of
Con - the system called - is diff in the
St. State in some degree
In the county no diff - of sum of Debt
Ex^r liable
to the extent of assets & one party as Ex^r, does
& is not always liable without his knowledge
for them. It is said if I act & this
liable for all cost but not for costs.
It is just, & not true in all cases -
formerly a Ex^r do not maintain the act
& may by the injuries done with the
mon - but afterwards it was decided that
he shall be liable to all costs & the criterion
to determine what per cent he shall incur,
was the ext of the benefits by the thing that
was done? Eg. A standard &c. A was
liable to R. Wilmot, but he dies & Gibbs
Ex^r, can C be liable? Bed for answered, Ans^d Ans^r C
is not liable, for if ext of A was only tempo
by the statute. So of a Bail & committed.
But Ex^r maliciously not Bail him. He can now
after agst C, But he carried away Bail him - the
Ct not, but if the Ct after
but here the Ex^r C, is liable - for if ex of

Exec[r] & Adm[r]. [illegible] not under consideration & yet is of him.

A[n] A committee a trespass by cutting down Bi[shop] timber
deemed it to mention that there is a boat - but
St L[o] is liable - but not as a boat but
is an accessory to [illegible] - the measure
settle entitle the case in law. It appears
as if the measure be law to vote away & that the
action lie for the injury of, the property and
but the case is as above stated

But see another
case, D. dies, who suffered the injury & A is alive can he
be made pay St L[o] of B. (C). - It has a right since
the Serv. - If same case [illegible] D's de las partes de Lois
not be shot at any rate, but a St was made
by use St L[o] of St. was also carried case of
part of another & a boat and he bishop could
recover

If end use is dead
that the right be punished for the injury to the goods
of another, by depending the case De Lois as to-
tatis the last power may be punished by the equi
ty of the rule, for slander of D a king dead. Bna
not made power, right and he be of A bid last
him - but if came into his lot A cut & carried
away B timber, the action and the lie of St L[o]
& St and be the case if he had only cut the
timber & left so or I Lord.

There a right
prop. vested & I Wife who is called the para
phernalia, not may be deputed it is her dotes
& ornaments - how that belong to the Hus

1 Bl 730

(a) And her necessary apparel is protected even against the claims of Creditors. 2 Bl 436. Thog c. 47.

Exec & Admr } Wh alive but at his death it
belongs to d Exrs unless it is wanted to pay the
Debts but can be taken for nothing else (a) & d
Exrs are bound they may be sued wholly as
offr made by lr to Exr. A Exrs can be ha-
rassphaenalias, and so he is considered as
a trustee.

The Exrs are the agents of ye Test. &
Exr is not liable beyond their assets &
if they are less than they are otherwise will be
a consequence of their want of judgt, he is lia-
ble for no more than they actually are. tho
if even through misconduct or negligence the
property is wasted, he may be liable personal-
ly for devastavit

Compassion arises from ye Prerogative
that ye Exr is allowed to act for all the Test.
effects not come into his hands, how the means
the assets only of ye Test. so that if Exr
must be may plead them & if he has paid out as
ye assets still he is liable for all ye Test. but
not as Exr. but personally for a devastavit for is loss has been
occasioned by his neglect & misconduct.
And ye bonds are given, they are a security binding
— ye said neglect himself & bondsman & an action may be
brought against both & land either for a devastavit or for
the neglect or misconduct. A these are the only
grounds of d action If the said a debt ought
not to be paid he will be liable as Exrs for more
than a mere debt of simon claim, in this case also

The Appraisal is good as to the inv[entory] & one would take it for it's value for the debts.

The first duty of Ex[ecutor] is to pay debts next to pay legacies, & then distribute the remainder according to the Will.

There is a question whether it is proper to get a release from one who was sued by a man who owed another debt to his Test[ator], it operates as a discharge of the debt. But this was not unjust, for suppose the Test[ator] did not pay it & he the Ex[ecutor] as a volunteer, contrary to the injunction of Test[ator] paid it, then it is decided he is not to pay debts & then above the question where it was not also just to pay legacies, this was decided [illegible] & then any good account to him & after debts & legacies paid he retains all that must be turned to legacy. But there is no question but even after [illegible] is allowed to pay distributive shares & the question arises if in the hand of Ex[ecutor] debts unpaid & demands for & some sum, &c.

By the Ct no Ex[ecutor] allowed a year & a half for settling the Estate but cd[?] delay allowed to do it - there was

Ex. V. Edm. Spencer is Not the Ex. on whom
& had confidence in
the Test. does, & the Ex. only
on — but the Ex. assumes a responsibility
in any danger the Cred. & Legatees incurs
in the Ex. is poor both will & the
bonds, & the rent & interests will remain
The "discharge" the Ex. we have referred to
As he will pay the debts & legacies.
And an amount always to the Ex. & if he
does not perform this office
Sometimes & the Estate is 2 Bl 507
is found when the Will, the
Ex. is appointed even tho' annexed. The Will
is the guide as much as if he had
been appointed by the Test. himself as Ex.
What is the Inst?
formerly sometimes were considered as real
as now as Ben. & as a part but all
things tend to the perfection real
perh. & as not a body glass spectacles
& well and be real. but after
this deed of all things to be removed with
out injury to the perfect they must be
considered as per. prop., as built a
house &c. is per. if you can remove it
without injury to the perfect. but when
the body glasses are not is & made the
Ex. held them is & care to be part of

[illegible] Will extend to emblements
[illegible] they depends altogether upon the Law of
emblements & sometimes happens & sometimes
does not, for a man sowed wheat or
the usual season & died before the harvest
the emblements are [illegible] & go to his representatives
but if he had had a lease for years & died
before harvest, they go with the Land.
An intire man gives to a widow dower
her widow Lord. & she moves the
emblements go with the Land for this
was by voluntary act, but had she died
the emblements wd have been personal

A Will & Inspire of testr wishes
as to & distribution & disposition of his est
is a mere direction, & has [illegible] to his
words 1 Lord Ray 177. 1 Com 234 a mistake to
construe a Will — & so I think it
may as well be by Deed as any, they do
& it is made in contemplation of death
& to take effect after his death. Lord a.
2 Ves. 431. a leading case

It is ground upon which
a person has power over [illegible] & real is not they
are Equitable assets 1 P.W. 331. 3 Atk
526

Lately speaks Mr Denison the Land
land is given Legatee & when Ten. Pur. - gives
but they are often used promiscuously. It

Exr. v. Admr. v. Heir — he who takes by descent

The Exr has power over the personal alone Lee

26. 21. The Admr has no

power over the Land. Altho' true as far as the estate of Decd is concerned but he may be empowered to sell the Lands by Statute but in this case he told. The money arising from sale of Lands under Act is to lay dow[n] under direction of Ct. Pain Eq. 87 not like the case of debts arising by contract

Act no more than Statute to sell the lands devised to be sold. The Exr does it, Act & Ex[r] nine not mentioned an Admr — appointed he does not. The reason of the rule, a that if Exr can sell land in this Ct, Admr ground of an implied assent. 1 Atk 420.

The Heir title to the personal commences instantly upon death of testator. And does the devise to the Legatee he has no title until the Exr assents, & this assent may be defeated, But if Exr does by any act the personal legacy. Assent amounts to legatee but if he sells only one legacy (all but) he has an absolute power over the whole property. 1 Dyer 254. Leake 93. 3 Bac 497.

The Heir of Exr may assent as well as Heir or Exr see Leake 93.

The Heir does not so as Exr 1 Lo Ray 86

compliments but from getting the debts
(Stat. Ca 97, 1 Eqn. Ca. Abr. 44) The Lds stand
upon a different

The Heir land is not liable
assets to debts, but suffering the Land
and the personal
Land to go out of the Family, the
Heir is to have the Lands to be sold for
payment of debts, and if the personal
estate and the profits
assets will not do it, then the Heir
is to account for the profits
& the Lds are liable for an account but
is not entitled to it, unless all the compli-
ments have received as much as he has
& the Heir is admitted to the account &
the price of the Lds goes in aid of the
debts as good as another

The Lands were Devised
to Trustees to pay debts & the question
was whether they, (by Law) as legal assets
assets. It was decided in a common Law
way at Law. The Heir plene admittit &
the question upon this. For if the profits
of the Land was legal assets the Land also
in his hands was so, - Bind & Ld
Cowper 2 Ch Ca 216. 2 Vern 108. 1 Com Dig 411

The real assets are not given by this
a Trust & they are charged all for, certain
debts in fact - Specialty debts and we are
call assets, but nothing but the assets
are liable, this Trust is liable for all kinds
of debts

As to what makes legal & equitable

(2) In this country all debts are active, & will run the estate is vested & the executor may sue

Acts xii 1 Pet 400. 3 to 341.
1 Wes 61. 1 Vern 411. 2 Pet 415. 1 Atk 484. 630.
1 Bro Ch 135. 137. 140. Hen & Thelwall argument
Co Lit 112 notes. 113

Devt devised some of his lands &c
not others. now the lands shd be taken first
to pay debts. for when a testt has made
2 devises the devised lands shall first go

But if one is denied to pay debts
& other left to descend to heir, the devised
lands in this case & first to go. reason ||

But if he devise

The devisee is to have a beneficial devise
the heir land goes first but if all the lands
devised to him go first 1 Atk 420.

But with yd
to the construction of wills the intent of test
governs & this universally. ||Now is & even
the intent was to subject the intent of test
& therefore the presumption is & test in-
tended to the end & purpose that debts
and legs be first paid &c. but here devd to
pay debts now as but to pay debts first
& so not to be void until debts paid

It is an usual thing for
a man to charge his devises to pay certain
debts & legacies; & now will here be all &
the heir is charged with & pay of debts, there

debts
legacies;

and any commander of him, but this is
extra to Law except, as varied by the Will
of the Testator in the case cited of a Testator
of the exec. executor but any case was him
by a Will of the ... But this (Court)
instead of the Exr is allowed to Exr of the debt
Except the Goods is in his hand. Thus
by a Will to the Exr they are the Legatees
after him who had the estate devised to him
to the amount of the debts charged upon
him,

This is the only case where Will of Spir
by Law upon can no receive directly as
the devisee by an act of debt. for this is
on the devisees implied promise to pay
the debt, by his acceptance of the devise
if it is unexcept it must be as to pay the
more, but if he got does go as if Exr, the
Exr goes as the law

The Exr ... always Law
as a gent Rule who all contracts, of his
Testator But there are exceptions as when
the court was made to draw a Court
of the Testator did die, it is not their
Exr did fulfill it. A debt a cont, the right
of survey dies with the obligor
As when Upon Exr and Law no right to an
act of Exr. As when a man cant to
do a thing the Law and account and attended
no way grow out of it. as case of a Steward
when his Exr can not a mind for a scate Contra com D.
Bl. Dy 322

Exec[r] & Adm[rs] } or a Lunger who has no remedy
for collection of an ordinary debt concerning
which there is no dispute, he has no thing but
the costs. Ld Ken Dy 111. Cro Ch 167. Yelv
183. Cas. Jac 453 the ward whereby ground
of the suit. _____

But the heir is not bound even where
he is named unless it is a specialty debt
not a simp. cont[t] debt
The manner in which the heir discharges of
debt is by a judgt wch goes agt the land &
it is extended until the debt is paid, by
Ed[w] land ed I statue to pay debts untill
lve 1/2 were made which subjected them
And a grant of rent out of the land was
not void power or only for to pay debts
to cease when the debt levy discharged. Vide Dr
Lant & Anderson's case did not extend to the land but
only the rents & profits of land. Le Jenk
209. 12 Cro J 150, 9 Co 12. Moore 209. Cro J 450.
The writ of Fieri facias goes against the goods & chattels
of Exec[r]. The Elegit agt ½ moiety of the lands 9 Co 12.
The manner of suing Exec[r] is not to
charge him as Debtor but not in Debt
but in a detinet, and by 9 may there
be cases in wch you may sue him in
Debet as in those cases in wch he
shall never was debtor but the Test[r] him
devise &c, Case of Loan other wise and
found not to be debt A Test[r] but p -

subsequent and (Query) may be sued as stated
And so if the last had taxed the costs
of the whole suit had been paid at
the time of test. death. The subsequent
rent may be sued for by Exr in his
own name & not in name of test.
unless the Statute. for he may do it
as in the name of his testator.

Lex I owe a debt, the year
passing the Statute is that the assets have
diminished by his neglect (1 Vent 315
5 Co 32.) Bond is debt. (1 Lid 298.
98.

The Bond will be unavailable as defeat the land by alienation
for nothing was liable in his hands
the Land & when that was gone, he
was no longer liable - but if the
Bond (d) is still liable, but
the Statute has effect in - of costs
Co Lit - 102, 1 Rol 777, 1 Eq. Ca. Abr 149.

It has been a great
matter if he ed ever to bound by
test. when test. was not bound in
his life time. as, Test. ying a bond to
be paid by Exr after his death. Lately
decided in a case, test. owing the Plaintiff & possessed
paid by Exr after his death. determined by
two Judges of Ch Jus. that he was
bound. — afterwards it came — & decided
the same by a Majority of Judges. Otherwise

(d) The Bond as well as the Bond of a Simple Contract

Eccl. & Adm. Law. The Case was under Review & decided unanimously that he was bound. J.R. R.D.Th.

A Divine, situated as the Hon. is, shd. bound if he puts into the Scrip. & this by L.

Can. of Deside

A Legacy of Debts — quest. could & Penalty bad before Receipt of it. Wh. had been devised to Archbishop of Can. Statute A Rt. quest. was decided that they could not take it & the reason was it was equitable assets. — & there are many decisions on & points. 1 Ves. 430. 776.

Who may be an Executor

One many contradictions on & subject. & Not a Certain Action we could, & Rt. contradict another, Rt. reason is that by Rt. & by the civil Law & there are many persons who are excluded by & civil L. who are not by the C.L. From whence the Civil Ch. Judge by them are Law other two Offices, but then if Office made of by Ch. & a prohibition will be granted. be not Ch. of Sp. & Court — & almost any body may be an Ex. then a Court of Ch. & by the Ecclesiastical, Spiritual & Temporal, Thus William Dupl. a rent & more could & 2 Bl. 503.

Who may be Ex[r] &c

The C.L. & Civil Law agree that Infants can be Executors

An Infant Ex[r] cannot act as Ex[r] until the age of 17 yrs but he is appointed Ex[r] at age the est. must be settled & was 1 Ch. (Lord 155) mile affirmed a Ex[r] durante minore ætate 2 Ro. 2 Ba 335, 1 Com 235. Co Lit 124. The acts of 1 Infant under 17 yrs of age bind no one.

And after this age, any act which does, after age of 21, but causes detriment he is not liable for but any act which an Ex[r] has a right to do he and he bound by, as if he had power to pay a leg[y] & had not after. & this cause and enjoin him to do, but it shall not be injured thereby and be binding 1 Sand 75. Cro E 254. Law 155

There is one case where says the Infant Ex[r] under 17 yrs of age may sell goods to pay debts but this is contrary to the current of law. See Sheppard and contra he is 17. 5 Co 27. Cro E 490.
And that he is not bound by any act to prejudice 1 Comm 113. 2 Ro 325. Cro E 671, Co Lit 172.

An Infant Ex[r] who has taken upon him Ex[r] ship and he must answer Creditors but not by writ friend when he is sued but he may in some cases by P.F.

Who may be Exr] It is said if a Deft dies by Attr, it is not erroneous & he obtains judgt. but if an Exr dies by Attr & obtains judgt it is erroneous. The only reason is. That the Deft cannot in any case act as Exr pendente lite. this diffr with the Exr = A Testator is of case of Admr I think it would be more proper to call it a void judgt 3 Bu 130 Lev 2 541.

If an Infant & an Adult be Exrs, they may both sue by Attr this it is said is because the Adult (Vent 212) can make an Attr for Infant. this is strange (Str 504) he may make an Attr for himself it is true, but how for another Lord Ray 1565. 600. 1449

But if they be sued the Infant must appear by Guardian these positive rules. 2 Ba 151. Str 318. 8 Mod 236.

Case of a Temporal Court This laid down in 1 Roll. that a Married woman may be an Exr. by the Laws of a Spiritual Ct - & neither the Statute of Distributions, Nuncupative Will nor the Appointment of a Spiritual Ct is valid unless same one of these, and if one doubt the Temporal Ct will grant a Prohibition

(2 Ba 37 &c. Ante 117. 1 Com 235.) And therefore
if J. Wms. dissents she can act but if
and if P. Ecc. Ct. attempt to compell her
P. & A. Ecc. Cts must grant a Prohibition
also the Wms. cant compell her to act
(2 Bu 1074 see Godol 100 to 110.) Then arises
another diffy suppose the Wife consents
& the Hus. dissents then by the Rule
he is bound by his acts now the Law
says he may dissent. But if the Hus.
dies during pleading implied
dies & she is bound. For now she
may dissent & if she does he cant
proceed, but if she says nothing she can
at instant her consent
The Wife is appointed Ex.x & proceeds
to do & dies & the Husband does not
consent or dissent now is an act
of there May cant plead that they
never were Ex.x as to grand. but
under this implied consent she can
establish their Will 2 Ba 378 Godo 110.
If a feme sole is appointed Ex.x
& then marries before she admx & then
Hus. goes & does the business & dies
leaving it unfinished — he must
proceed under the implied consent
he having not dissented (c)
But it is said
A feme covert may make a Will
(if her Hus. agrees to it) & appoint some
one to complete this business, now

(c) If it is well established that the consent of the wife is necessary & in all cases is relative consent

Who Exs Feme Covt } The Husb consent is not
required - for there is no marital right
affected 1 Rol 604. 1 Mod 211, 2 Ande
92. et ita vide.

A Corporation aggregate cannot be an Ex - for an
Infant who is an Ex - by the Eccl Law is liable
to be excommunicated; & Attorn at Law cannot
appear & Corporations cannot be Ex - because
they have no souls. - they cannot take the oath
of Probate 1 Com D. 235.

Traitors & felons & c
Apostates cannot be
Exs by the Civil Law - but Traitors &c.
cannot by C. L. Howby by Eng Law
Infants, Persons disabled from being Ex
by publick offences, Dias Nuttans & Persons 2 Dr 275
attainted may be Exs - for they are but trusts 10 Co Litt 128
1 Rol 914.

But Persons by communicated cannot
be Exs - We have nothing to do with
this - & this is the only case in Eng Law
in wch a man for his own wrong can
be Ex; & this is founded on ye old Law yt the
residuum shd be distributed for pios usus
Co. Litt 94 - Cro Eliz 65.

Aliens. An alien tho' he come
hither to real estate by devise till
he can be an Ex 1 Com 235

But it has been a quest. still
doubtfull whether an Alien Enemy can maintain
an action as Ex - he certainly can
maintain for himself - but by current opinion
he cannot maintain an action in right of an
other he can maintain trover & Cro Eliz 65

Who Exrs &c. may sue Idiots & Lunatics cannot sue
Exrs because they are incapable of exercising a discretion
non compos. If an Exr becomes & adm[r] committee to another
he may be removed & the
Admor of his debt is unpaid by
drunkenness 2 Ray 361. 10 Mod 25. & is incapable
of doing his duty. The Ordy Ct cannot require
to grant Probate to a man because he is poor &
Insolvent. 2 Ray 361. 10 Mod. 25. Nor can I tell
compell the poor man to give bonds
but the can & often does, for the man
who is poor & in danger of Insolvency may
waste Cro Eliz 467. 1 Sal 36. 299. 2 Ray
361. 2 Vern 249. 2 Ba 377. to commit & waste & convert
intestate but this shd be guarded against
And even when there is no evidence but
that of the Exr lying in prison common
sense will be a stop to him from
proceeding in the business, pendente
lite until the doubts are settled ——

Who may be Admrs & how they
are appointed

An Admr is a person appointed by Law
to manage the Pers. Estate of a deceased person
This is done when there is no will or if the
appointed in the will refuses to act or there
is none appointed — or he has acted & died
then an Admr is appointed or if an Exr dies
intestate & his Admr dies
intestate

No one can be an Admr until the age of

Who Adm?

Altho, a brother & Executor for
K. contracts such entitle & exp. If if
the Person upon whom have devolves is under
age etc. Adm de minimis state, will be appointed until he
comes of age, And it is said he can't be
entitled as because he can give
bond. but this, I think is without foun
for if the Law did say he cd be Adm the
Law and entitled that bonds were to be giv

In many of the States Adm must give bonds
as well as Adm & as Ex can act at 17
then must be an exception to the rule that
he can't give bonds entitled 21. Lol 39
a Ba 381. Lovelis 5. Cox Ch 446. 3 Mod 295.

The Land

Law provided that Adm shall be granted
to certain persons, designated by St Statutes. It
must be given to the "Widow or next of
kin" Altho, the doctrine has been adopted by
almost every State in the Union but by
all is qualified. If the Widow is a
disqualified person or the next of kin is an
Infant Refuse exercises a discretion, as to
all can be said about it is, if there
is no substantial objection to the Person
appointed by Law that Person must be
appointed, this not so as to the Person
of whom the Person states whether
not he be disqualified from living an Adm 2 Bl 495-6.

Any person who may be an Ex^r may be an Adm^r for they all act in another right & if the crime or character be of such a nature as to disqualify the Person, the Ct will in its discretion reject them 1 Lomx 202. 249, 2 Ba 493.

A feme solely marries, & before marriage committs a devastavit, the Exec. is then liable, & he is for all her wrongs but she must be sued during the coverture, in case of debt, though in this particular case the Ld has been allowed to follow & affect into y^e hands of the Exec of his Ex^r after his Wife's death; & this is done by Ch.

But he can be called after her death for the wrongs she has committed, because she has not parted into Exec's hands by means of her Ex^r he is liable even after her death. — & the reason of this is, that he is Ex^r in his own wrong. — & if y^e Ld should appoint an Adm^r de bonis non he could sue y^e Exec. & recover so

1 Vern 209. Cro C 208, 227. 1 Ba 293. Moor 781

The case is, A.A. married Lucy Roe & she is Ex^x of T.R. & has all his Prop in her hands & she & her then husband possess'd & enjoyed but before it is settled she dies now her husband has no title: & so y^e person has his title in his own wrong but he might

Who Admr? } of the Pleas take out Letters
of Admon de bonis non.

History of Admon } Orig[l] there
was no such thing as an Admr but the King
a. [illegible] Patriae (to whom his estate
of dead men devolved) to seize them & retain
persons to do with them as ye Law directs
but became common to command ye all
to ye Clergy, & this con[n]ected ye Time of
Rich 2d - But afterwards the Crown committed
the power to ye Bishops of ye Diocess
& was before granted to others & the Court
Bp[s] & ordered the whole settlement of dead mens
estates but the Laws were loose, the
Law was then if 1/3 (1) shd go to ye Child[n]
1/3 to ye Widdow & the remaining 1/3
which was all the Crown cd dispose
of, he might distribute it to the Children
& to whom he granted it, to them it went
after the Debts were paid & if there
was no Will it went into ye hands
of ye Bishops but tho there was no
provision to pay ye Debts, & the Bishop
could not be compelled to pay them tho
the Law was alledged to pay ye Debts.
This was cause of complaint for ye Bishops
often lost their Temp. Then ye Statute of 31 Ed 1st
gave the Ordinary power to check by obliging the
Bishops to pay Debts to ye utmost of
Assets, wch placed them in ye situation of Ex[rs]

(1) Wch were called "the reasonable parts"

the Child & widow shall have two thirds
& the residue of the debts & incumbrances
shall remain at my disposal of which
he produced none at all. 2dly, when
alleged the Bishop to dispute certain items
& to say upon whose name "the most
Learned friends of the intestate
& his was the first appointment
of administrators a Bro 3 & 4. 1 Com
258. Lord L. J. May 495.
Three persons were appointed by the
to represent the intestate as to his
personal property. From this time the
Bishop was not liable to be called
upon to pay the debts for it now became
duty of the Adm^rs & the Ord^y could
for debts due by Intestate & suspended
him liable to be sued. But the
Ord^y was not liable for the residue
but bot. therefore, & this the cause
there was no such thing as obliging
him to distribute Altho' it was consi-
dered honourable to do it. Upon
his own Act & Order compelling
the distributions of the pers. effects & debts
&c were paid, but the Wife & Child^n
never had nothing until the debts were
all paid. & Wood has been of late
years all the L^d C^r of Many Cases
been pleased & even Ld Hardwicke himself

History of Admon &c. in B. L. the Ct is almost the same as the Statute of Wills now in force in Virginia —

Admon is granted by the Ct of Chy. & in some cases by the Ct of Probate which by the way have different names in different States.

Person who are entitled to Admon The Ct of Chy has been adopted in this country who grants Admon to the Widow next of kin. —

By St 21 Ed 3d Ch 11 it was directed to grant Admon to the next & most lawful friends of the Intestate & it seems to have been agreed that belonged to the nearest relation with the exception of the Wife. in case of the Wife's death. & Afterwards it was decided that the Wife should be Admx to her Husband. 1 Com Dig. 960. 2 Ba Ab 414. Lord L. 8 Ray 1198

And if there were several of the same Degree the Bishop might appoint who or any one of them he pleased, but the St. 21 Hen 8 ordained it to be granted "to the Widow or next of kin." & "Next of kin" the Bishop designated. This St of Hen 8 has been adopted by every State or is binding on the Ct. & may be taken by the ancestors.

Instead of "next of kin", Mr. Ld read the Letters to be granted to "next of kin, "participating

de son genius" this may serve to explain some hints

How the Hus. continued to the Adm. of his Wife, during her life, unless he forfeit his right (a) for there is not a word in the Act that gives him the same, how the words are "shall have" the same no, — but still the Hus. by common construction of the Act is entitled only to the Adm. & Jurisdiction appointed Adm. of his Wife

The Act also alters the Statute of distributions — but in favour of the multitude of Hus who were not entitled to the benefit of the Statute, gave the Hus. Right to the surplus. and this Hus. has been adopted in some of them Wills in the West, now in those States that have not adopted this Act, the Hus. has no right to the Wife's property remains. (c) and if the Hus. was an improper person to have the Adm. this Act is obliged to pay the surplus to the Hus (Salk 1 Vern 249, 1 Vent 219.) for it belongs to him by Jure Mariti, (1 Vent 219, 1 Lev 233.

That Act enumerates obliged to distribute to Children (1 Lev 233 Cart 125. Ow 101.

But by this Act of Distribution, for so it is called obliged to distribute, 1 Eq Cas Abr. 176. If the

(a) Doing, this is includes from it and also that the Wife was entitled to the Adm.

District of Lunsford Where land lies disposed of
Vote act letters of his heir and be entitled to
(Lord 3. 3 & 4 Wm 320) Not excluded by
words of this entirely

With respect to Number
of Heirs. That if it may grant to the
whole number of them or to 12. (1 Show 351. 1 Vern
315. Lovelyn 3. 1 Sal 36. 1 Stra 552.) This is a re-
ground that they are other persons.
As to Bond it must be, to Register of
this Court computation of Civil Law
for this is the Law of Kentucky. Where
Letters is granted to two or more. Court
may grant this or more administration
whose different parts of the per. for B.
& this being jointly, i.e. they all act when
all. Lord 4. 1 Show 351

More Who are the
persons shall take letters of Adm. The descend-
ing line is to be preferred. As the mode of
computation, to this court - by law
a. t. As the same in ascending line as of
Father Mother are of the same degree 1/4
but as the Law is to be preferred the
takes the letters of Adm. Lord 4.
Now there is no diff in computing the
ascending or descending line, but as to
collateral Lines this more difficult
now these are computed by the civil Law is

as suppose this is an Uncle & Brother & you will find wth ye Admon Mr Swinburn ye from the Intest to the com. Law & then down to the Uncle & Brother as you will find the Uncle is in ye third degree. & the Brother is in ye second degree, & the Brother is entitled to the estate, but if there is no Brother but a Nephew then the Rights may ap- pear either the Uncle or Nephew en- titled. But now if ye Brother claims he is in the second degree & he can claim after either the Uncle or Nephew If there are no children the Parents the next is then the Brothers & Sisters & ye Law — & next Uncles & Nephews & there is no diffce between Uncles & Cousins & then the whole — & Half Blood. for Half Blood are come to as the whole Blood — & the quantity of Blood is not considered but the Propinquity 1 Atk 453. Bl. 517. 1 Bro. 41. 2 Ab. 503. 1 Vent 316. 323. 425. 3 Mod 75a

Where two grand children who by the Mother's side are Legal Rep. of one of them is the estate and dies intestate to the prejudice of the rest of them, how the Legal Rep. stand in the place of the Mother if part of the stock of the deceased be living & this is the ground of the decree

Who are ~~x~~ Entitled, in the case of a descent of
Inheritance stand in the place of their
father & so as elected between
all the whole blood on deed. Stand
in their own Place. But now since
the St Statutes no notice of the legal resp.
but only notices Heir of him, it is to be enforced
the Rule of him alone or intended
& therefore they are entitled. ———

By the Levitical
Law no one could marry within the 3d degree
nor call below it could, as, coming in this
computation by the Civil Law

Then persons de-
signated by Law may be disqualified, refuse to
act or be absent, in which case, Custom provides
that a Curator may be appointed by the Court for the
interested. & he is the proper person Lord
C. Lal 756

Now there can be no claim of an Intestate
Court that he shd be appointed & there is
no Law wh compels the Ct to appoint
him, Custom alone warrants it.

If Ex refuses to act or dies, leaving unadministered goods in Disp^n, then the Ct must
appoint an Ex^r & they may take who they
will, for they are not governed by the Ct
Ct appointed Ex^r who refuses & then
Ct may appoint B. no relation to D. or A. &
not governed by Ct. Eq. — & I mean that

3. Dy 272 a Le relates to the Adm^r of Intestate estate
and so it is of the Ex^r virtute officii

2 Ba 385

If there
3 Mod 89. Sid 247. is a residuary Legatee it is usual to appoint
Vern 240. 2 Roy 68 him but there has been a great deal of dis-
383. pute on this point; If he is appointed it
is de bene esse on the same ground as to appoint
of D Cond^r or ad^m — but then is not
compulsory. as in the 5 Co. 95 b; 2 Ba 386.

The Court may
Lord 171-1-2- in part die intestate as to a part of his
estate when there is no residuary Legatee
& intestate as to Residue
as when he has omitted left out of the Will
of Legacies & debts. Now if he gives his
Prop. away by specific Legacies, & leaves no
thing not appropriated, as to those part he
dies intestate, & so the right of him a Will
Dem must be appointed Adm^r as to that under
Show 25 Dy 272, 2 Ba 386

The Rule
was appointed to administer est. of Pl.
P died leaving Widow & it was contended that
right of him shd be appointed to Adm^r de bonis
Non test^r right of him, the case is in Godb.
& is singular for it seems the rule by
the only Legatee. & held the right of him
of Legend shd be Adm^r but only shd this be
the rule?
then is no Particular reason for it but the
Legatee be only a trustee & so has the
other — & so a rule shall stay it — & can

"Who dies"? } as in corpus. It is well enough
in the case of God &c. for the purpose (their exist)
interested person. But as to other cases
the Ld Keeper &c. is not of him &c. Durfee &c.

Suppose
none of these persons &c. to stand then another
must be appointed at the discretion of the
Ct

When an Admr is appointed during minority
more shortly. The Ct is not bound by any
but the Bishop appoints who he pleases
Lord Ly. Rol 251., 2 Ba Ab 381, 4 Mod 244.

If a person
is appointed Exr & he does not act, the Ct then
summons the Exr before the Ct to accept or
refuse. & if by thy excommunicate him
for non attendance in the courts usually
Ecclesiastical thy inflict a penalty. In
Canon forfeits £10 Bro Abr
& by them is a second mode of the acceptance
executed, but any information by Ct
to & Ct is sufft in this State, & this is
sufft in the several States 2 Show 252., 2 Ba
403.

In certain cases this Court may by Exr
restrained in other not. Thus the Exr of
an Exr is an Exr of the first testator, the
nexus of this one lost.

If a Admr dies during minority appointed an Exr. The
Exr of Admr
Exr is not Exr of the testator, there an Admr

must be appointed de bonis non.
The reason of this diffe is. That in 1st case I first appointed entire confidence in his Ex^r & it is concluded he and I have been willing the Ex^r shd appoint another this not so with Adm^r for there is now a total confidence reposed in him. for he is an officer of the Ct, & upon his failing the Ct must result next to whom it comes to. viz. to the Judge in whom every body places confidence
And in any case where there is another intervening between the last Ex^r & D^r. a new Adm^r must be appointed. Lovel 6. 1 Dall 907. 1 Com 251. 1 Atk 460. Ch Rep 179.
Suppose J.S. appoints A & B his Ex^rs & A. dies & leaves C. his Ex^r how C. is not Ex^r of J.S. but the whole business goes over to B. for here there is no need of any Adm^r to be appointed. But B. also dies leaving D. his Ex^r, now D. why shd not C. be Ex^r of J.S. as well as D. — he is not. D is not Ex^r of J.S.
Then is cases omitting A & B were Ex^rs & A died & appointed C. his Ex^r — B. then died without appointing an Ex^r but had D. appointed his Adm^r, now is not C. here Ex^r of J.S.? This is not decided tho there are many opinions upon it. See no reason why C. the Ex^r of A. shd not be Ex^r of J.S. And London had not B. intervened a new Adm^r

Who adm 2 Da 415, 1 Lal 311. Bal. Ca 127.
1 Lom 264. how far the Adm has no privity with
Ld. the Adm may act Executr of a Deceased
q. D.

In all Instances where the Ex. has commenced
suit the Adm must be an Adm de bonis non
appointed - & when there is a Will annexed
test. anx.

Thus a case, D. appointed A. his Ex. & then
A. died & appointed B. an Exr of his Ex. - Then
here an Adm de bonis non state must
be appointed & this is grantd to Ex. a great
quest. arose in Penn. how Exr could
administer upon the estate of J. D.,
the argument was that B. had a right &
E. came into the room of B, & so what B.
could do, E. cd do, but by this kind of
argument we loose sight of J. him, for
here E. is not appointed by him in whom
J. D. had confidence. & so was the con
determine 2 Da 251. Cro E 64 211, Bol
246.

Lo 17 a case that whenever the succession
of Ex. is interrupted by another the cast ad-
ministration de bonis of ye 1st Test.

It is said that
anex Adm de bonis non can be appointed
to adm what part of ye estate & on the
reason another shall not have no reason
why shld not be so,

Refusal of Executor.

On refusal of Ex and Ad must be appointed. & also, it is said that Ad cum can compell the Ex to accept. this is not true unless it be by means of a Devastavit & it has also been said that Ex may appoint another to do the business, but this cant be done now. 2 Ba 405 A Refusal must be by some act before it is recorded — this in Eq. — In County in none of the States the Ad and Attorney is not required but a letter to & Ct will be sufft. Lovel 176. Swinb 448.

A man. desired not to accept & it being recorded was held sufft renunciation Cro. C. 92. 2 Show. 252. 2 Ba. 405

If there is but one Ex & he refuses & one Ad c. a. appointed he cannot after, pray Ps will encline but if he recants before Ad c. granted he may prevail. if it was granted on his non appearance on the summons. Lovel 176. 180. 190.

But if there are two Ex and one refuses a suit must be had in Chancery to prove a will, & he may transact all the business as long as the co-Ex lives & this notwithstanding his renunciation this was so in this country but if he refuses he never can exercise this Co Ex any more than if he had been sole Ex & refused to act. — This is the opinion of the Legal Gentlemen I have conversed with but it is no where I believe settled.

Refusal of Ex } But contra if the Ex^rs are sued it is not to say reasons of law for the people are obliged to know the acts of Ex^r above, Lovel 177. Swinb 444.
and the Ex^r will remain to him notwithstanding the refusal. but if before proof and ex^n of Ex^r the will must be approved before. Dy 100. Mard 111, 1 Lol 307. Co Lit 292. 3 Bac Ab 451. 9 Co 39a. 4 Ed. 565. 2 Ba 404.

If the Ex^r has once began to act he continues tho if he has done any act of a Ex^r before proving of the will, as if he sold goods any thing else and make entire man Ex^r in his own wrong. as to pay legacies & selling them. for all these things are evidence of his acceptance — Were this done only and not proved he shall be charged as to take care of the goods as he would his own. Mard 146. 2 Ba 409. 1 Vent 30 2. 333. 2 Lev 152. 1 Rol 917.

a man took the goods of a stranger for the goods of test^r & held to be Ex^r for it was evidence of his acceptance. but if he took the goods of test as his own it is not good to an acceptance 2 Ba 406

One of two Ex^rs took a legacy given him & it was held an acceptance for he could not

If without the assent of the co Ex^rs

take the Legacy without the Assent of Ex'r if he were not one himself. 2 Ba 406, Dy 165 1 Roll 917, 1 Mod 19

Quere. Whether the Ex'r's Widow can be accepted by the Ct, after the Legacy actually assented & delivered to her husband. 2 Ba 406

It may be that the Ex'r had refused & the Ct accepted, after he had acted, then the Ct may afterwards compell him to be Ex'r 2 Ba 405,

If the Ex'r has only assented at Ct & taken the oath it is not the same as if he had proved since 2 Ray 1563. 2 Ba 405, 2 Ray 165.

Different Kinds of Administration.

Adm'r must be granted in writing under the seal of the Ct 294. 1 Dy. 1 Show 408.

Adm'r must be granted when the man dies Intestate & the Adm'r has the legal title to all the goods & may sell them at his discretion as the Specific Legacies in case of a Test. are, but then he must account to the Ly 1 Com Dig 568. 9 Co 39. and on grants these letters bonds are taken they are taken as well from Adm'r cum test. annexo as any other

Adm'r may be granted to three or more & if one dies the same remains. This entitled

[illegible] kinds of Injury other than of the kind—
1 Com 263. It is the nature of an Office
2 Com 240. 2 Vern 314. 1 Atk 482.

Administration may be granted in many
cases now it did not formerly Adm on be granted when
the Ex was out of the country, this an Adm
durante absentia, & so granted when
there is a dispute who shd be the Adm. (b) Now in com
& this an Adm pendente lite, (c) there disputes as to the will, a
are many temp. Adms but they are confold with
of transacting all the business of the Adm
Lovel 192. 2 Ray 1031. 1 Com 263. 3 Lev
23. Lha 917. 2 Show 69.
So if Ex refuses to act, Adm cum test. an-
nexo is appointed & also when Ex
dies before probate, tho' he had actu-
ally Administ, but if there was
no Ex named in the Will 1 Sal 304 3
2 Ba Ab 66. 1 Com 256, Lovel 179.
If the Ex has lastly adm'd & died — Adm de
bonis non is appointed.
Formerly if an Adm or Ex had obtain'd
a judgt & died, an Adm de bonis non cd
not take out Execution for Execution cd
not be taken in the name of the dead
man, but a 29 Car. 2. gives him a sci. fac.
upon the judgt of the testator but never cd on why
the sci. fac. shd not be taken out by
Adm without the aid of the Ex.

Now this has never been decided in our courts (2 Ba 386. Lutw 1560, 2 Mod 290 2 Ray 1072.) Nor may it be a point of importance where we have no such statute Jacob 2 Bl. Com. fac.

to have appointed a Guardian till the Death of his Father. Had not Lord Hardwicke saved the Prop. & Memory put into Chancery. & had taken care for the Children, but he died. & Bill is offered the Children now there is entitled to all the Prop. & Est. which remains but he can claim the Rents & Profits in the mean of this Intestate, 1 Sal 246. 1 Vern 473 2 Vent 362. & we must call upon the Adm. to refund

2 Ba 386.

If Ch. is under 17 yrs of age Adm. de bonis non etc is granted. & so if the person who is entitled to Adm is under age, but in this case the Adm is considered as a kind of a Trust for Infant Ch. or else they have not the power as Adm. agent — this the Law in Eng — but in P. & N. E. they have the same and visit the Adm. Bro 250. 5 Co 29. 3 Atk 739.

If there is a default appointed Ch. with the Exr. then is no need of the Adm de bonis etc. Now he is not appointed,

But if there are two Minors who are Ch. one of whom is 17. the other under

Different kinds of Ex[rs] } There is no need of the Ex[r]
mi. estate being appointed.
It is said by Com. 250. that an Ex[r] derives
mi estate has the same duties as an
absolute ex[r] tho' the contrary is
laid down & the idea (instances) prevailed gently. &
indeed it is there laid down that he
may do all they ask ex[r] absolute
can do, but the act prejudices the
Legatee by his act. a not 5 Co 2 pl. 6. 5 Co 67 b.

not make a lease
when the good
which they are
possessed of
to pay debts

But if the ex[r] is grants out his
authority — or executes — it is not
pro commodo. and this appears to be the

(a) Executors, Duties
the ad[m] is pro-
perly only the
power & more
(b) limited & not
to do more than
those powers
& accounts
for
the profits of
an absolute Ex[r]
This 5 Co 67 b.

The Effects of Repealing an Adm[on]

subject is very unsettled even at the
present day.

What acts can an Ex[r] do before Probate

The
Ex[r] derives all his auth. from the Test[r]
Test[r] immediately on Test[rs] death
but as much descends to him as
real estate to the heir, for he can
do any thing with the goods they
[illegible] do with his own —
The necessity of proving the will is that
he must then and not before
without the probate he has no pow[r]
to act. (a)

It is right if he proves the Will

1 Lal 303.

after commencing the suit Creditors
of Ad. Lovell 174 & 229. 9 Co 38. 1 Lal 302-3. 1 Com 213.
But an Ad. can do no one valid act
before the Ad. is granted him, for all
his acts is denied from the Ct
for the Ct may pay debts that the
man debts granted release, &c all
these Authorities Ba 412. Lovell 174. Ed Lut
292. 1 Lal 303. 1 Com 213. Pr Ch 441. & Co 28

The man
who is entitled to Ad. has no act entitled
between the letters, now if he has no
debts after the Ad. it is said he can act
over them after but the man whom
whom J.S. dies intestate for Ad. might
who call. relation B. C. & D. debts of J.S.
now it is said after he has paid the
debts of the Ad. he may call whom
more any; but this merely on the
Law, how all that is meant by
must be, that if the named
Ad. may afterward call upon them same
debts, & they for their relief must
go upon the wrongful Ad. in an act
for money had & paid to his own use by
mistake.

If the man entitled to Ad. did grant a way that he
should be void of the old offend
take out letters it would be bind by

Law 174
2 Bac 412

What Ex. do where Obl. & Bond was due before the probate of the Will, the oblige is cannot be sued by the Ex. & Bond was due from the Test. the Ex. must sue & (Law 174.) & the Ex. may be sued for this money if he has done any act of a Ex. Lovel 176. 1 Sal 301-2. Now in all those cases in wh the Ex. has a right to sue in his own name he need not prove the will before suit, as for taking the goods of Test. and of Ex. Joseph. Indeed Some of Ex. can sue without probate only in two instances 1st where it is for a debt due Test during his life time & for a tort done to Test during his life, as in case of ejectment due after Test death the Ex. sues in his own name. But in case of a tort as they abate by death the Ex. cannot sue in his own name of Ex. but after Test death or in the name of Ex. own name Lovel 174 1 Com 217. 235 115 b 1 Sal 307, 2 Ba 413 The reason is that he does not come as he need not make probate of letters testamentary. If the word goods of test be laid maintain an action of debt in his own name, & so for all causes of action after test death

3 Lev 54. 1 Com 233. 1 Vol 917.

Co. Ex. Shares are deemed in Law to be one person as they relate to the Co. Their interest is indivisible & the act of one binds all - but it must not be understood by this that every money act of one binds the other but only so far as acts of this kind. as a release, but a grant away of all the ~~release~~ interest he has. Tho if he has an interest it will pass but it does not follow so far as the interest of the other shd pass, As in case shd of a residuum. Agt if a Servant has been committed he alone is liable unless committed at 1 Com 246. Lord R. 1 Vol 23. Cro C 347. Ex executrix in ch. it in shares. We find the Rule that if there is a sum of money given to one of the Exs as a part of residuum. The Ex can maintain no act for the money but he must sue to the Ex who holds the rest to pay. Tho now since the Act gives the Ex money shd sued, yet no reason why this act shd not be maintained, - at the time of making the rule this act was unknown 1 Com 89. 246 Hut 9 pleasure it and

Exr is in the Nature of Trustee for the rest of the Legatees & must account as such

Co-Exec^rs } now to attorn in West
Hall should the quest. arise. as per #

One Ad^x cannot make a valid release
it must be made by the whole nr
another a diff^t Christian Ex^r & Ad^x 1 Com
241. 1 Atk^s 458. Lovell

Now as to the date that Ad^x
must be appointed there is an exception
to case in wh an Ad^x may sue
in his own right. Ex. if an Ad^x
of J. S. sells a lease in Pb^s of J. S.
& he is taken away, & wills & sues
it is not neces^y for A to B new
probate, for A had him in his hyp^a
& is not sue in this character
of Adm^x but it is not correct to say
to B cant sue, for this may be
if case, for the act, as that lets
case on right, for B hyp^a of A was
also the hyp^a of B 1 Atk^s 460.

But if one
dies (of with Ex^r or Ad^x) the power ceases
ceases, thus unlike any of the former
Lovell 21. 1 Sal 30. 3 Atk^s 57.

If the Ex^r sells
made real^y Legatee, & one of them has
got all the prop^y into his hands as assets
it is to be money. now what diff^e is
there in bringing an act for money had
& so if then new article, Comp^t as property

now I doubt not but the same is maintained

It is a general Rule that an Ex is not chargeable for the wrongs of his companions, But in Cases where one of them is receiving by the others if it is agreed on their hands, & the one liable at Law to Ord unless it has been proved fully disproved of by the other but it is said that in this case Ch has interfered to relieve him who has instituted the Suit to Ord Eq 314. 2 Ves 895. 1 Lal 315.

As all the Ex mentioned are sworn it follows, that they are all liable to be charged, but this applies only to Acting Exs, - this by the Eng Law, if any one Ex refuses he must be joined with the other as Defts but in Cornwall (by our Statute) may Cohort by the acting Ex alone,

But as Testamentary Ex has a right to transact all business the Ex who has accepted may exclude his fellow from Interest by the motion of one mon (9 Ord 97.) Severance 1 Lal 97 as if his appointment will release But if both Ex have administered the must be joined in the action, & so when the Plea was that the D was "an ex" with him

Co-Executors & the Plea was bad. he
shd have pleaded that "it was an action
with him"

But if the Ex^o bring the action
it is a good plea for Defft to say there
is another Ex^r for if there is he must
be joined in bringing the action 2 Ba 295
Remark this plea is a plea of retainer
for if the Defft shd under the name of
the one Ex^r then was another
Ex^r it wd be of no avail Cro Eliz 61

The object of
the Law & Love is to prevent the other
Ex^r acting.

If there is a Dev committed
by one the goods in the hands of an
Ex^r the state may sue as well as if
there were one concerning Ex^rs, for the
Injury
Inj^y of one is the Inj^y of all 2 Ba 297
Salk 462.

Executors de son tort.

The Ex^rs
is a person who meddles with the goods
of the deceased, exercising acts of owner-
ship over them as if he were real Ex^r
-or good any unlawful intermed-
ling with the Prop^y of deceased in his own
Ex^r in his own wrong. but these
many acts will not amount to
intermeddling
intermeddling make an Ex^r de son tort

will not if done with ordinary
ent. as if he take the good men
y to the care of them not &c. &c. &c.
but if he sells them &c. he is no. So if
he transfer, releases, sells. and. any
thing of the like nature if the tenant
has a his own ~~any~~, he will take
the character, So if he sell take the
specific Legacy devised to him, without
Assent of right Ld Coke 1 Com 61. Lord
51. 2 SR 99. 5 Co 33-4. 2 SR 100. 1 Cy 165

If the Will &c. did take more than
then always to them — as by if devised
them by and he &c. &c. — And if
a Will take from & upon if it to be
with &c. &c. &c. And if Will devise
away prop. to depend that - then
are and he &c. &c. & this is the
case with any fraudulent donee
& if the donee did receive them
from Test or this death dead & the
should not be left enough to pay Debts
& many &c. (See 1 Co 406. 410. 2 SR 99. Ord
for if he is not to be used no one &
271. 2 SR 397, for Test is dead & cannot
& the Ex cannot sue & Ex. But in some
of these Acts provision has been made
for it's in in such cases

But still there are many
cases in wh a man is not to do work

Exec^rs de son tort } altho' he does may assume
as things can of the Test — saying a debt
out his own money — refusing St. Louis
when it is likely to be enjoined — or for
any act of theirs as Exec^rs
& Burgesses Lord 5th Com 284.

The Rule that this if Plaint^f can
by Strange & fairly recover
the interest that he claims the Def^t.
as his own he is Ex^r de son tort. if
not so he is not Ex^r de son tort 1 Mod 166

This Ex^r de^t
is liable to account. & Def^t cept him
is as Ex^r of the last will & Test^t for
the People are not obliged to know
he is not Ex^r if he appears as such.

But if there is any doubtful
Ex^r acting the rules do not apply
in their full extent. but only when
he claims as his own actually, but here
he is liable to be sued by Ex^r or Ad^r
& the remainder becomes assets.
& If there is any such intermeddling
as to account of Ad^r it is an encou-
ragement upon this Ad^r as Ex^r. & makes
able in this. The is not charged as Ex^r
de^t but by proving his own title
in ordinary cases. Dr Comyns Dig^t Ad^r B 5 & 9. 1 Salk
Ex^r de^t is liable to his own debts before 313. 319. 302
317. 2 Ba & Se
any Ad^r is appointed, & Executor stands in the room of the Ad^r
or men not discovered

The rule thus is if the intermeddling is before the acting of Probate or Adm^tion he is Ex de son tort, & Lee is liable to Creditors but if they delivered the Goods he has acted over to Exec^r & he is not liable for anything but if he has not done this he is liable 2 Ld Ray 99.

How the Ex^r de son tort is liable to Creditors of a Testator but not beyond the value of the goods he must have found out what he took in the regular order but he can retain for his own debts so if he has all the Goods in his own hands & Plaintiff of the Ex^r

Lutwyche Ld Ch^r says thus, he cannot have Plaintiff "that the Ex^r did not receive enough to have found out all the money" but they plead it to cut down the damages to mere nominal damages for the Testator contains & he is liable

But if the Plaintiff that the "never was Ex^r" he need not be obliged to by the whole course of the suit, as soon as they the Defendant understand him Ex^r de son tort, & on acc^t was but ought him the Plaintiff came & it was needless for the whole debt. but this is the old law & I shall admit this

would be held

accord. should the case arise

If there be a rightful Ex & an Ex de son tort, they may be sued jointly & severally but it is otherwise in case of a rightful Adr & Ex de &c. for an Adr & Ex cannot be joined in action 1 Com 256. Went 255

At C.L. the Ex & Adrs of an Ex de &c were not liable to Creds tho at Equity they were 1 Com 266. 1 Mod 293.

But now by Ld Actt Cars the Ex & Adrs of Ex de &c are liable at Law to Creds 2 Ba 391. Lovel 51. 4 Burns Ecc L 191

Of Making Debtor Exec^rs

By ye old Eng. Law if a Debtor was made Ex his debt was discharged, the reason assigned was that he cd not sue himself. Dow Com 439 Salk. 24. Bro C.C. 179.

But it is now holden that his debt is a fund in his hands for the payment of the debts & Legacies of the deced and 2 Bl If there are assets ultra without this debt & Ex to pay the debts & Legs he may still retain his debt. The reason is that in this instance the Debt is considered as a residuum & there is Salk 306. nobody to claim it. 1 Co 30. 1 Sid 35. Hob 10. Cro C 273. Yelv 150

And it is the opinion of Judge Roane that his debt is not discharged only when he takes the residuum, so that if he had a legacy given him by the will he would be obliged to pay the debt — It is true there has been no decision recognising this principle But a clear proof that it is a true one is, that the debt of an Ex'tor is never entitled to the residuum, is not discharged by his appointment.

In Eng the Ex'or must give bond. before he will unless there is something in the will clearly manifesting the test intention that he shd not be 2 Ba 379. 1 Roll 920. Gil 160. 6 mo C. 373. Sal 305.

And as his right to withold part of his debt as those who claim under the Ex of Distributions is founded on the idea that he is entitled to the residuum; it may be a quest whether if he have such a legacy as wd bar his right to the residuum he can retain his debt as such claim.

Of Making Exec.

A debtor may make his Exor Ex'x in such case the Ex may retain so much of that debt as will satisfy himself. But this must be understood, only when his debt is of equal degree & ranks with the debts due

Exec^r Ex^r's unpaid. for if he be a simple Cont^t Cred^r he cannot retain agt a Cred^r by Specialty or any other of a superior rank. 2 Ba 379. Show 155. Mutt 125. Went 81. Godol 115. Salk 304. 10 Mod 496. 2 Bl.

So if Adm^r be granted to Cred^r he may retain so much of Test^r or Intestate's effects as will satisfy himself. — this too by the rank of the debt Godol 115. Went 81

These rules are from the nature of the case reasonable & just, for as the Cred^r who first commences an act gains a priority to all others in equal degree, & as an Ex cannot sue himself, unless he be permitted to retain he must be postponed to all others in equal degree.

But an Ex de son tort who is a Cred^r cannot retain because this would be allowing him to take advantage of his own wrong. 6 Co 30. 1 Ba 379. 2 Bl

An Ex is not obliged to take in part when there are not assets enough to pay all the debts with

Exec^rs right to the Surplus

It has been a quest in Eng. to whom the surplus of per. Estate belongs. after the debts a

debts and Legacies were all paid & Ra 420. West 1. Sal ca 240. Bro C C 219.

Formerly the Ex' himself was considered as resid. Leg.e, but now if a legacy not appropriated to any particular purpose be left to the Ex'r. Or if there can be collected from the will any intention of that nature the Ex' shall not take as resid. Leg.e Ch will order a distribution as in case of Adm.rs. But if no such intention of that can be inferred from the will, the Ex' will take as resid. Leg.e 3 Bro 43. Bro Ch 41. 1 Vern 473. 2 Atk 47. 2 id. 228 300.

An Ex' in Eng has no wages for his trouble.

The Ex' right to the resid. cum is not barred by the Legacy unless an affirm proof of such testamentary that it is also for him, and Parol proof is admissible to show, that notwithstanding the Leg. the Test' intended Ex' a resid. Leg.e But this must be very clear & convincing 2 Ves. jr 465.

It is laid down by legal writers, that Parol proof may be admitted to rebut an equity, i.e. to restrain the legal import of a Will, when such import varies from the equitable import. But such proof cannot be admitted to establish an equitable, in contradiction

Surplus. 2 to the old legal interest but the former must be collected from instrument itself 2 Atk 8. 228. 3 Pw 40. 2 Ves. 91. Wils 313. 1 Vern 473. 1 Bro Ch 201. 2 225. Sal Ca 240.

Wills

A Will is a declaration either by word or writing, as to the disposal of an Est to take place after the testators death. 8 Coke 228. 5 Ba 497.

To every Will there must be an Ex 2 Bl.

A testamentary inst not appointing an Ex is called a "Testament" Lovel 92 y Term. 146. 2 Bl.

Gen'l any person labouring under no particular disability may dispose of his Pers. estate by Will Lovel 140. 1 And the presumption in all cases is, that testator was of such discretion & ability as y. law requires for him who wd contest the Will 2 Mod 316. Co Litt 89. 1 Bro Ch 314. 2 Bl.

But persons of the following descriptions cannot make a Will.

1st Infants. — 2d Persons of non sane memory-as lunatics — 3d An aged person cannot make a Will if it appears from his conversation at the time of making the Will that he was not of such discretion —

4th If a Test was in all third appear-
ance or blindness or other cause to vi-
a Will, it must be known to him
touched & must be proved — 5th Gen.
deaf & dumb persons cannot make a
Will, but proof may be admitted to
shew that such person knew the cont-
ents & had understanding enough to
make a judicious disposition of his
goods. — 6th A drunken man can-
not make a Will, — 7th Nor an
Alien enemy of any lands or goods, —
8th A Will made under any restraint
of fear is invalid, & it wd seem that
in this case the cause of fear is unfou-
nal or imaginary tho' the rule given

The age of discretion for making a Will
according to some acc. is 14 in Males 12
in females. others fix the age at 15. but
I dare suppose it to be 17. because by
Lord Hardwick (Cas) the civil Law
governs in this respect & by that Law
the age = 17.

A Bus. cannot dispose of
his Wife's shares in act — chattels
real — or paraphernalia, by Will, tho
by Deed he may dispose of all — appro
priated shares in act — Roper 51

A Gt Lemont
could not dispose of his dower by Will

Wills 3 Because the jus accrescendi inter-
eases between the issue of the last &
that of the Devisee or Legatee
This Jus accres. is generally abolished in
the U.S.

A rem^r of a chattel interest may
by way of Exec^y Devise be limited over
after an est for life, provided that the
rem^r must be all in esse at the death
of the Devisee, & that the contingency up-
on wh rem^r is to vest happens with a
life or lives & 21 years & 9 months & Broth
33. 147. Co Litt 20. 2 Bl. 173.

The life man must lodge an inventy
of the part. limited over, in the Ct of Ch
& if in failing circumstances must
give security wh shall be puts com^s
2 Bro Ch 379. or 279. This last has been ov-
erruled.

An est tail cannot be created in
her Spirit. No that if her Spirit is
given to a man & the heirs of his
body" the first Letter has an absol-
ute property in it. The reason assigned
for this by the Eng Lawyers is that
such an est cannot be barred by a
fine & recovery & ergo if supposed to
exist it must be a perpetuity wh
the Law abhors.

A Will of Per Prop ought
up

ought regularly to be in writing signed & published by the testator.

It is not necessary that the subscribing witnesses as in a devise of real estate and the testator's name being written by himself in any part of the will is a sufficient signing, and there is one instance given by Lord ( ) where the testator's name so written by another person yet being approved by the testator was held to be a sufficient signing.

If testator cannot write his name his mark with his name written by another will be sufficient

It is said, that if the Will be written in testator's hand writing tho' not signed it is good, & even so it is certain even if it be in the hand writing of another 2 Bl 501.-2

It is laid down as a general rule that if a Will of both real & pers. prop. be well executed only as to the pers. prop. it will pass that, but be void as to the real. For support of this rule it is said that the intent of testator shd not be unnecessarily defeated and as the Will is good in part his intention as to that part ought not to be defeated disregarded. But says J. Rew this reasoning is not satisfactory, for it is

Wills } is not impossible that one part of the Will may be made with reference to & others, & that the intention of testator may be violated by permitting the Legatees to take all the personalty & then come in for a share of the real.

At C.L. Nuncupative Wills might be made of Per. Prop. But the restrictions imposed on them by the 29 Car. 2. have almost abolished them.

The duty of Exec^r & Administ^r

The first duty of an Ex^r or Adm^r is to make out an Inventory of all the Est of Dec^d which can be expected in his hands, and to procure an appraisal of it by persons sworn under oath. After he has made out the Inventory & procured the appraisal he must act with the Ct of Probate for the Prob. inventories, but he is not at all events liable to the amount of the appraisement. If the Est. be sold for less than the appraised value the Ex^r is not liable for the loss unless it was occasioned by his own fraud or negligence. — If the loss does happen thro' his fault or neglect he is liable on his bond, to an act^n by Cred^s for a devastavit

But if the Ld are the Ex. &c for the debts in common form, they must ground their allowance on the Inventory

If the est. sh be sold for more than the appraised value, the Ex. &c gains nothing but must account with the Ct for the avails.

A Judge of Probate ought not to reject an Inventory of prop. the title to which is disputed, for his decision cannot affect the right of trying the title at C.L. Kirby.

The Ex. is never liable to Ex. unless assets are rec'd by him unless he has made unreasonable delay 1 Salk 472. Lord 22. 467.

If an Ex. submit to an arbitrament, & the award is ag't him he cannot after that avow the want of assets as to y claim — for he submits to it at his peril. — etc for as assets come to his hands his liability ceases 1 T.R. 453 5 it 61. 671.

An insimul computassent by an Ex. &c as rec'd, money due from the testa does not make the Ex. personally liable. 1 Roll 102. 8, 9 & 10.

The power & duty of Ex. & Adm. on any

very nearly the same, but there are some points in wh they differ

Ex. & Adm. are bound for their testr & intestate to the extent of their assets & no further 2 Ba 395. Godol Wms 100. 3rd Ed 318.

The Payment of Debts.

The Ex & Adm. is bound to observe a certain order in the payt of debts. The order is as follows — 1st Funeral Charges & Expence of proving the Will &c. — 2d Debts due to the King by record or Specialty. — 3d Debts by particular Sts as forfeitures &c. — 4th Debts of Record. 5th Specialty Debts. 6th Simple Contract Debts. 3 P Wms 102. Dal 277. 2 Vern 521. 2 Ba 432. 2 Ab.

Of debts in an equal degree the Ex may pay wh he pleases. but he cannot prefer a debt in præsenti, solvendum in futuro, to those wh are already payable, unless the latter are of an inferior degree 2 Ba 434-5. 3 Lev. 59. Cab Ed 315.

If the Ex have paid a debt of a lower degree when there are others of a higher degree unpaid & he knows such — he is personally liable. — Tho' he is always

exerted in this case if he did not know of the latter. 2 Ba 495: 1 Terms 9 a. Blow 279. 1 Lid 280. 2 Show 492.

A Creditor may gain a priority to those in equal degree by what is called legal diligence 2 Atk 113.

A Voluntary Bond is postponed to all debts but preferred to Legacies 1 Atk 292. 2 Wms 56.

If a Creditor object to the payment of a Bond given by the deceased, on the ground that it was voluntary, the Ex^r may by bill bring the parties into Chancery to litigate their claims at their own expence. If he may make payment according to the decision then given.

Enquiry may always be made into the consideration of a Bond when third persons are interested.

It is the duty of Ex^r to retain assets for the payt of debts in presenti solvendum in futuro. If the Ex^r having thus retained assets, become a bankrupt before payment, it is somewhat doubtful whether the Cred^r can pursue the assets in the hands of Legatees. It seems reasonable that

ever

Payment of Debts. It seems, on principle, that the creditors should pursue the assets, in this as in common cases, for if misfortune is to fall somewhere, it should fall on the heads of the volunteers.

By the Eng. Law no time is limitted for the exhibition of claims against the estate of a person deceased.

If the Exr has paid out the whole of the assets, observing the priority of claims as aforementioned, & is then sued he may plead "plene administravit"

Legacies. After payment of the Debts the next duty of the Executor or Administrator is to pay the Legacies

A Legacy is defined to be a gift or bequest of particular goods & chattels by testament 1 Bla 466. Godol 171. 2 Bla 512.

The person to whom a legacy is given is called a Legatee 2 Bl.

The Exr to whom a Legy

as given may not prefer himself as in case of debts 1 Ves 494. 2 Atk. 512 2 P.W. 23.

Ex. d. death of Test the interest vests of the Legatee commences, though the legal property of the Legacy still resides in the Ex. & he may even dispose of a specified Legacy for the payment of debts.

The assent of the Ex. vests the legal property in the Legatee & any slight matter almost will amount to the assent. Co Lit 111. 2 Atk 598. Robson 190.

Pecuniary & Specific Legacies

If there is a deficiency of assets the specific Legacies are to be paid first & the pecuniary are to be averaged if it is necessary.

Specific Legacies are any gifts that can be identified as Horses, sheep money in bags &c.

But Pecuniary Legacies consist of pounds shillings & pence &c.

Suppose nothing left after payment of debts & further Ex has been obliged to take one or more of the specific Legacies

Penn. 2 Yeates 39 & the rest still remaining) to pay debts, Is the Legatee of that which was taken to save the whole? It is generally held, that if the Legacy had been otherwise, as tho' killed by lightning, the Legatee must lose it, & shall abate of this question hereafter.

After specific Legacies are all paid & there is not enough left to pay pecuniary Legs. in full — they must be averaged 1 Vern 21. 2 ic 688. 1 Bro. 422. 2 Salk 415 — 3 Atk 96. 1 Bro Ch 60.

The Ex^r is not to meddle with specific Legacies untill he has exhausted all the other portion, but he may finally resort to them & take which he pleases. — As to this subject there are contradictory opinions, whether the other specific Legacies are to contribute or not, & tho' the current of authorities to be that they are to contribute Roper on Wills 113.

In case of a deficiency of assets after debts paid to pay all the pecuniary Legacies, each pecuniary Legatee takes a proportionable share 1 Bro. 422. 495.

The rule of the distinction between
pecuniary & specific legacy is that the specific
legacy must not be meddled with un-
till the pecuniary are all spent but
after the pecuniary are gone the Executor
may take the Assets. And whether there
were legacies or not meddled with &
allow a part for those that were taken
quere. but then are some authorities
that this will compell an ab-
tornare. Roper 114. But this is di-
sputed, & there are contra decisions

And if after all the debts were
not pay the debts the Executor is of
course. but if the debts are all
paid & there are assets enough to pay
all the pecuniary legacies. then an annuity
must be struck as to them

10 Ves 422.
495

As to the taking notice of
a specific legacy to Aliens, & the notice
when he ought not, when he is to
account for the legacies in hotch, the
diversity is that the specific legacies are to be
preserved. & if any thing is to be taken
it must be from the pecuniary
legacies. & if the specific legacy is
lost by accident
+ 1 Bro C C 150 is lost the legatee must loose it

Remainder Specific Legacy

There is a rule of law in relation to Remainder Legacies as prevailed to the specific but how it depends upon the intention of testator as if he gives any all he est in Money Legacies except the $1000.0 to a particular person. here it is manifest the last is to be paid at all events— so in charging a Legacy upon an estate devised to one Pr Ch 393.

Vested & Lapsed Legacies.

A Vested Leg. is one where the right to the gift in the Legatee and his repr. immediately on testators death

Lapsed Legacy

take place in two instances, viz when the person die before testator it then becomes lapsed into the estate of testr. Or goes with the residuum. with the said Leg[e] v. Ld Cg. Ca. Ch. 295. Loved 206. 2 Vern 707 3 Pr. 521. 915. Pr. Ch. 200.

Several of the States have altered the law in respect & have given the Legacy in this case to the Repr of Leg[e] but without issue & if it is lapsed & then it shall all been lately made so that the distribution to the Children seems to be meant.

2nd Mem. 5 Division

in the Eq Court & I came after-
but I cannot find any in point. 2 Vern
394.

A legacy to him & his
heirs upon the condition & if he fail-
ure of that condition the Eq is taken
of course for this is the apparent
intent of the (w)

A Bond, a Leg given
to A at 21 or at a certain Legacy - but if it
is given to A to be paid at a certain
age time it is not lapsed the distinc-
tion is rather nice when wise
if a Leg is given to A at 5 & there it
is not vested - if payable at 5 & there
it is vested - If in the first case
A dies before the end of the 5 years
it is lapsed, seems in the other
case. This rule arose in the
Devises, & under the terms
of the Statute of wills the
age of the devisee they did not
abrogate it 1 Ves 442, 447. 2 P.W.
610. 3 Bro. C.C. 471. 1 Vern 462. 2 Vern 675.
Pr Ch 21. 2 Eq Ca Ab 295. Ltn 920.

Upon
the principle of favouring the heir if
there Legacies are charged upon Devise
est, the death of the devisee before
the time appointed for the payt of the Leg

(w) Where a Legacy is given to a person at a certain age or on a certain event, and the Legatee dies before the age or event, the Legacy lapses and goes to the residuary Legatee, if there be one, or to the next of kin.

Vested & Lapsed } in both cases becomes
Lapsed. 2 Ves 610 +

On this county the legacy of real
est and becomes vested indefeasibly as
against Executor and renders the gift lapsed.

Legacy to be void unless he will
do it is just upon interest it is a
vested legacy. for it is presumed testator
intended to give him a present
interest. (2 Vern 593. 1 Vern 462.) So Testy
& Legatee died the 6th and 7th to demise
upon ½ 2 Bro Ch 305. 375. Pr Ch 317. 1 Atk 512.
3 Atk 545. 2 Ves 263

Legacy whether an interest
or not if to be laid out in land
or yield an annual increase in-
terest. (1 Ch Ca.) immediately.

Tenant
also in favour of the heir has been
held to devise of land (2 Atk 522.
2 Pr Wms 276.) when legacy to be laid
upon the lands.

There is a rule that
the person entitled to the Lapsed Legacy
may claim it upon the death of
Testator — but may if the time of Legacy
has arisen but not otherwise. (2 A.)

A Legacy to go to another if the Pr Ch 490
Legatee died, is a good legacy 2 Vern 207
521. 611

Legacies on Condition

2 H. 8.

condition is unreasonable the leg is good, but the cond is void
is lapsed immediately - the gen'l
cases are on the prohibition of
marriage. But where is one
that the leg'd shall be lapsed if dies
during the life, the cond shall
the restraint was unreasonable
2 Vern 21 & so void but if leg'd was held good

Cases of Marriage, or Gen'l restraint

that the person shd not marry un-
less the condition void — the leg'e
good — for this end to impede
the to adhere - it prevents marriage
2d. He must marry a person of
a certain prospect & avoid. 61
Rud 86, 1 Vern 20. 1 Ponb 248. 254.
Stra 214

2 H. 8. Bus may leave leg'e to
his Wife a condition that she shall
not marry the cond is void. for
it is a the ground that he wishes
his children to be under the care
of none but his Wife — So if
there are no children the cond shall
be void. 1 Vern 20 2 Rud 86, Pollex
48-6.

Restraints admitted. to suit of
marriage still unreasonable if

Legacies

Legacy on Condition. Where a Man marry before that age the Legacies be this age is not settled but is left to the Ct to determine, there is one case who says 18. And Ought for it ought not to be legacies 16. in females.

One case held good that he did not marry at a certain place but this was a mere whimsical place. Case of a Burgess London his daughter did marry in the Country in York.

There have been some cases where accord to restrain the marrying out of Profession of religion (1 Pr Wms 295. 1 Bouldt 243.) but this has now long since been done away Lord Hard 267. 1 Vern 20.

So much more so shall the restraint marrying a Papist person as a Vagabond.

All those restraints which oblige the Legatee to marry with the consent of another person are void unless the Legacy to give over to another on failure of Condition. 1 Vern 199. 1 Salk 5.02. Pr Ch 565.

When a Legacy is void Given

The Lords Word here is the intention of both the technical interest of the Will is not regarded. case of his giving his est of his Child & he had none but 9r Child = & then 9r Chil both, but if he had had Chil they would not have taken (even 106. 2 Vern 101.) and this = the construc of them gen.

If a man devises Est. to all his Chil - or 9r Chil - the same dispute whether it extends to those who are in Spe at the making of the devise alone or not. It is said it extend only to those who were in spe, but if being the case he may deprive his Chil of any share of his est. But on the contra, held But the true construc. seems is that if the Will gives to all his his Chil. it goes to all the Chil all that But if a third person gives to the Child. of Jd. it goes only to those who were in spe at the time of making the devise & this I think is warranted by the auth. Dy 177. Co Lit 112 a Pa Ch 490.

The Jews was given to be equally

divided among his Next relations as
his own relations — Ib. The Ct under
the est. to be distributed by the Ex, for
it is impossible to get at the devisees' names
Pr Ch 401. Fall Ca 251. 2 Ves 527. 2 Vent 361.

the devisees

When given
to several persons to be distributed ~~by or~~
according to the discretion of a trustee
person. Ct have assisted trustee to
control the distribution, and otherwise
it is void. this a. on ground that
the person here named is considered
as a trustee. Case a Man gives his
Prop to his Chil, to be distributed at
the discretion of the Wife, Remainder
to his daughter 2 Vern 492, omits
the Wife. the Wife is his former wife
the whole to her daughter. Ct added a
distribution
to the others. 2 Vern 513. Bart. Eq. 3d the decision
of the Wife
being manifestly unjust

There is a Rule in Eq. & Law
persons to dem that the construction is a
good one not give the est to chil nor
in esse nor is that if the Legacy is
in the future, the chil. not in esse
shall take Yet so if the Legacy is vested
fact.

all the Est past future wh the test
had at ye time of his death, even ye
the Will was made long before
Lewis 2 Eq 98

And this is because the law
is constantly changing & has it and a difficulty
to ascertain what the law
was at any of the dates when wills
are executed.

Quest Rest. If a man gives all
his est at a certain place, it
is said by some that it extends only to
all he has at that place at his
death, but this is doubtful.
If the thing was specified it would be
better perhaps. as my horses at Blair
Acres. (4) I suppose myself that the
Supr. Ct. can ascertain what was
the intention of testators in this
Jersey (2 Ves. 606, 683.) & this opinion
I think the courts will warrant.

at the time when they made the will at the time of testr's death

The bequest of a particular
article at a particular place will
lapse even if it is at such place
at the time of death.

About a century & ½
ago a rule was established in Chr. that
if a legacy was given to a Creditor was
equal or inferior to the debt, it was
held in consideration of the debt, this
went on the ground of the intention of
the testr either implied or expressed.
But it will soon merit opposition, but instead of repeating the rule

Legacy Cases 2nd Class 26th they took hold of circumstances in took it out of the rules (Indeed Lands to be considered by most men that this would be considered as a part of the debt.) But 1st class of cases holden not to be within the rule was a Leg. of Cattle, where as the non debt was in money. Nor it was determined that the legacy to discharge the debt would be in the same articles 3 Atk 226. Pr Ch 394. 2 P Wms 516. 1 Ves Sr 421. 263. so that the rule in this case the legacy must abate & the debt remain BOH 108.

2d Class only Bonds, if the legacy was not payable at the same time the debt was. — But then must not only be ejusdem generis - & of the same kind) but also payable at the same time 3 Atk 96. 2 Ves 406. 636. Pr Ch 286. 2 P Wms 516. 1 Ves Sr 421. 2 Ves 409. 636.

3 Class if the Will contains the words "after the Legacy of any debt given & devised it was held the debt was to be paid at all events, (1 B. W 440) & this almost overturned the old rules 1765)

4th Class after this a case arose where the legacy was ejusdem generis (of the same kind), payable at the same time & no more words in the will than

1 Bro P.C. 141.

Pr Ch 286.
3 Atk 224.
2 Atk 330. 96.

the Act to make the rule laid down of the circumstance of the child being illegitimate & therefore the father was under additional obligation to take care of him 1 Bro Ch 129. 2 P.C. 245 (made to the Illegitimate son & Executrix as to the qualification of the Act)

During this period some of the Judges held that would be connected in the case of the Will (Ex Ch 2 P.C. 555) yet altered the intention of the Testator that it should go in lieu of the Debt, or it should not be in satisfaction of debt.

There have been a case with out all the above qualification & that the Ct decided it should not be considered in lieu of the Debt unless expressly mentioned so that now the rule is down 1 Bro Ch 145.

So now the rule to be if the Legacy is not expressed to be in satisfaction of the Debt is not so -

Repeated Legacies

Where the same Legacy is given twice in the same will it is but a repetition it being in eadem verba generis ut Testamentis. But if it was first given to be paid in money & then by

Repeated legacy to be paid in goods & it and be a good legacy in both cases, or cumulative
of the same legacy in Will and Deed. A legacy is given in diff instruments it is cumulative. See Ante vol Law Rep 3 & 4 Geo when cumulative & when mere repetition. 2 P Wms 213. Swinb 526.

A case arose in Law in which there were two Deeds one purporting to be a debt as a note the other was in the nature of a Will, the sum in both was the same, it was moved in Chancery generis &c & it was held that the Court & Jury decided that they had both, all the circumstances were laid before them out of the one were attempted to be extracted two cases the one was not illegitimate neither was there anything therein which expressed his intention that it should not be in satisfaction of the Debt or Debt. Judge R. has a manuscript report of the cases it is not printed

There is a
new Case. What is done in a Will shall be in satisfaction of what was agreed to be done & this is in case of marriage settlement, in these cases the rule holds good, Law agreed to settle upon his Wife Goods, not having done so but about to die he gave her

an allegation & amt. this often carried into effect by Ch. (tho at Law the allegn. void. (Pr Ch 263.) for it is doing the same thing in a different way Bridg 119. 1 Vern 95. 2 id 115. 665. 849. 1 Wms 424. 1 Brs Ch 305. 3 Ves Jr 53.

Agt. a List of cases where the same thing is done by Legatee in lieu of Testr as is ordered in the Will. Case. a Man devised all his estate equally to his Child - with the exceptn of £400. to one Child to build a house with, Resolved, that gave the Son the £400. & this was held to be the satisfaction of the Legacy. this all goes upon the presumed intention of Testator Pr Ch 268, 1 Vern 95. 2 id 115. et id anc

Ademption of Legacies

This is when something is done wh takes away the right of Legatee to the Legacy. The accidental destruction, or alienation of a Legacy, is not ment an ademptn of the Legy tho it may be so,

Suppose a man gives a Bond to A worth 500; & afterwds he collects

Ademption of Legacy. It is not an ademption if you cannot act for the collateral upon other ground than the intention to defeat the legacy, as if the obligee came voluntarily to pay the debt, or if he paid it out of the fear that the obligee was about to break, or that obligor wanted the money very much And called & got it paid up. Or if the prop was mortgaged by testator; If the prop was destroyed as a house burnt down & not be lost. but if another house was put on the same spot it is not lost to devisee

There are many times nice questions, for it will strike the mind of different persons differently & the 470 authy depend on influences from the peculiar facts. Lord 2 Ves 681 & 681. 2 Bro Ch 508. 2 Vent 351. 1 Eq ca Ab. 310 Rop. 89

The Rule as laid down is, that if the thing is sold or given from necessity it is no ademption of Leg; i.e you can act for it. 1 Mod 303. 2 Dick 328. 164. Amb 401. 2 Ves & 309 or 329. Rop 35, 2 Ves & 25.

If a man by will (Bro Ch 263,) gives

his daughter his legacy & afterwards pays it to her the same money, it is an ademption of the legacy

Lee Vs. Where there is a legacy of goods at a certain place which the goods did belong at the time of the decease or not In some of the books it is said it must be there or it will be an ademption as when he gave all the corn in a certain barn that died 10 years afterwards; how? Notwithstanding that clause in your will there are objections for he did not have meant the corn at the time of death, for probably it is all gone. Here the value might here been paid & that value here be ascertained. But when he gave all his horses & cattle at his seat at Dale, & afterwards he had them as many then here you must either go on the ground of either an entire ademption of the legacy or allow the Legatee the value of the goods there at the time of the making the will, & this I think the most reasonable, this is the case of the Bond at the end of the succeeding page. The 6th then says Legacies shall have the value of

Solemnities of Legs } the Bond, for the Bond is not
not collected. but denied all
the Facts in a certain ship which arrived
at the respective Port. & the Ship was
unloaded. & the Ct held the Obligors should have
the value of the goods in the ship at
the making the Bond (1 Ves 279. Rob
Ab. 9.) not where if he was to take
only Wastage - in the Ship at the
death of the Test. there was none taken nothing

Abating & Refunding Legacies

The Ct is
never allowed to pay any Legacy unless the
Legatee will give security to refund if any
debts afterwards appear 1 Ves 248 2 Vern
205. and it is said if this security
is not given the Legatee is not compellable to refund. the mode of expression
tended to a misapprehension; for if the
Ct find the Legacy nothing there remains
more debts, & is not meant the Executor
shall the Legatee to refund but merely
that of the the Legacy is paid he must after
wards compell the Legatee to give security
but the case is merely this. A made
a Ct; & B & C Legatees & nothing all the
debts were paid B his Legacy was
a debt afterwards appears - & the Ct paid Legacy
under a misapprehension - & no decay

upon the
Executor him of Legacy money by mistake
without any act of Testator 3 Atk 150 The
Legatee for many Legacies 2 Vern
235 Ch Ca. 115. 2 Vent 350, 2 Ves 193.
Land 19. 210.

It is a rule that a Creditor may
come into the Court of Chancery in a Creditor
of Legatee by a Bill in Ch if the Ex. is in-
solvent. But not otherwise, nor will he
may be not in the last case? the
Sum must be that the Ordy had an action
at Law, Yes in any case when
the Creditor cannot get his money from
Ex. he may come upon the Legatee
& the Creditor is to be recollected has a
right to this money in preference to
Legatee; But suppose the Legatee
the Ex. was insolvent to pay the
Legacy the debts apparently being all
paid, now here the Creditor cannot come
upon Ex. for he paid it out under an
order of the Ct. & therefore Decree,
the Creditor may come upon the Legatee
But it is said let him sue the Ex.
& the Ex. get it out of Legatee, now
here is in truth no ground to come
upon Ex. for the paid under a Decree of Ch.
& the Sum that Creditor cannot be found by
Legatee 2 Vern 193. 1 Vern 94. 2 Ch 205
2 Vent 350 must govern

Pecuny legacies also 1 Kin 21. Cook 467. Mett Ex and also Deeds Leave Eden 484. as well as others.

Suppose Test Ex had paid all debts & also the pecuniary legacies & expenses & there is a deficiency of assets what is to be done? How can the Ley. have an ascertainty as to Ex - but the case meant no wrong. Will the Ley to Ley it over on Parties Representatives has been made for refunding how the Legacies shd be secured equally amongst Test Ex has also become a Bankrupt Some of the Ex's assets - There is no bond of Ex to be taken & there is no way to preserve the Law except to sue the Legatee some upon the other Legatees. There was a case in this country where Test Ex had only under a decree of the Ct. & the Legatees permitted to come upon Test Ex Legacy Cha Ca. 130, 2 Ch C. 2 Vern 360 and this principle applies to land & Legacies both.

Payment of Legacies

When the Legatee is an adult it is to be had of course to him.

A Legacy is never barred by any Lapse of time tho' it may be by length of time wh raises a presumption that it is paid

If the Legacy is of a small amt it may be paid to the Legatee even if he is a minor Lovel 211

If a Legacy is given to a Minor it is safe to pay it to his Guardian for he gives bonds. But suppose the Father of Legatee is also now the Father gives no bond & therefore he is not safe but by application to Court the Father may be compelled to give bonds to pay it over to child. There was a case in wh a Legacy was left to the Father of Legatee, the child came of age — there was no settlement between them, he went into Partnership with his Father & they failed, & under a comissⁿ of Bankruptcy the assignees were for the Exrs to pay it over as they did & compelled it & a very hard case (1 Burr 485. 5 Co 29. 18) but now was the Law & they were obliged to do it Cy Dart 59. 301. Lovel 211

If a Legacy is given to a Wife it must be paid to her alone unless she is to be married then it must be paid to her alone Lovel 213.

A Legacy was given a married woman who had returned from her Husband & died & the was directed to pay

Rent of Leg[y] to pay it agst. Now the hus has a right to all the Leg[y] left to his wife, but the uncertainty & the uncertain in such cases depends upon the articles of seperation, & this point is decided. that he cannot claim by virtue of the articles & cannot sue for it. 1 Ves 261. 2 Ves 90

Where the husband & wife are divorced a mensa et thoro. the hus. alone is entitled to the Leg[y] for the wife is still man & wife but if the Court 1/9/28 pronounces a nullity of marriage (the marriage 28 Geo 2 c 33,) void ab initio, the wife can sue for it 1 Ves 228 9

When this Leg[y] is to be paid. Leg[y] to be paid at a time & this is to be paid then, if no time is appointed it is to be paid at the end of a year. but if that time is prolonged by the Ecclesiastical Court 2 Atk 415, 2 Bro Ch 39. 1 Ves 96. 2 id 88.

If Legatee dies before the appointed time for pay[t] it must be paid to his rep[ves] at the same time 1 Ves 199. 2 id 88. it was to have been paid to him

When the Leg[y] is to be paid, it is to carry interest, the Int[st] is to be cast from the end of the first year or the end of the prolonged time

When a Legacy is given charged on land, or on funds wh yield an immediate profit, this day of payment is the time from which interest is to be computed. 2 Atk 119. 2 Ves 357.

Rule of Equity law as to debts & demands is, that they do not carry interest 2 Eq Cas Abr 415. 2 Ves 491 2 Atk 119 till the time of demand 2 Ves Jr 357.

The reason of difference between Legacies & debts. For a debt carries interest from the time it becomes due whether demanded or not. Whereas a Legacy is not to be paid nor to carry interest (Forr 104) nor to be payable

A Minor is entitled to the interest from the time it ought to be paid without demand, even though he has a Guardian. 2 Ch Ca 161. Cases 209.

It has been a question. Whether a Legacy appointed to be paid at a given time shd bear interest from that time or the time of demand. now I see no reason why this can always for Legacies in gen. tho there are exceptions. the Gen: Rule is to bear interest from the time of demand, & for the reason above 1 Eq Cas 415. 2 Ch Ca 11, 161.

If a Legacy is given by a Parent to a child & there is no other provision for the child maintenance shall be presumed as it was paid for at all. that was to bear interest from

When Legacies be paid at the end of the year — to make the rule compleat they ought to be paid annually, the reason not given for the rule (1 Eq Ca Ab 201) that the Father is bound to find 12 or 20 pounds per ann for his child.

Recovery of Legacies

How Legacies are to be recovered by the Laws of each State but the most usual way is by a bill in Eq^t & in the Court of Exchequer.* But in the State of Delaware it is peculiar to this Court by a com^on act, but in quiet all^t is made in the Orphans Ct.

But there are Leg^s that can be recovered in any of the C L B & Rs as Leg^s charged upon Lands & even in the Ecc. Court. for this is a charge personally upon the Leg^e & he is bound both by his acceptance & by the testators will to pay it. 2 Ray 937. 5 Br 690. 7 Br 667. 1 Atk 103, 1 Mod 143.

* 2 Show 51

Residuary Legatees

Where there are appointed to take the surplus, after the Debts & Leg^s are paid, & he takes the Lapsed Leg^s & if it is not charged

upon the Land in wh case the heir takes it. But I presume this will not be the case, for we do not take such care of the Heir – & as we have not their reason, we therefore will not take their Land.

It has been a quest. in case of the Devisee of Legatee that the Test. was settled & res. could not tell in what he died state, whether the Rest. of him did take or not. It is now decided that it belongs to his Exr's. & indeed I see no reason why there ever was a question about it (Bank 62.) for that gave all the residue to him in that manner as it was as much a Legacy to him as another. (c)

As this Legatee is intitled the consent of Exr it has been customary for him to pass the Exr's bill in Ch. to take oath whether he has not dealt with property misimployed the prop. 3 Ba 484 Palm 409. Lord 41.

If there is no of the Devisee Legatee the Exr is the next if he has not a Legacy given him in wh case he must 1 Ch Ca 9. 1 Ver 330. 1 Dr 556, 3 id 441 distribute accord to the St. 1 Rep 413

(a) or Annuitant &c
(c) so in case of the Devisee of an Annuity charged upon the residuum

Dona. caus. mor. ; ed donatio causa mortis
is made by a man on his death bed.
It has nothing to do with the will
but it will avert if the testator
recovers his health in the same without the intervention of Executors &c. It must
as to lands, but with them or effects except
cash or goods, & attains to Donee
by the contract, for no recovery
to take such to the prejudice of Creditors
& end of Legacies

Requires it good & must be with
a manual delivery & something agreed
between to pass, as Money they say
Lend & out, as they in a certain
drawer in a certain purse but
L. v. L. 2. cont. to this the Rule by the
it in hand. for the assent must precede
the gift

The gift may be made out of
Court 2 Ch. Ca. 69. 1 Ch. Ca. 408, 411. 3 Ch. 359. 2 Vez.
131. a Cases case, indeed it is the above be
embodied.

It has been a question whether a donee
in case of such as do. caus. mor. if it
were a negative but there is no doubt
but if D. should not act & his Agents
to do. now how stand if the money
it were a compliment to Spark. and his
with the delay. from that account

be not
by Ex. & the Done can't bring it on
in his own name, for he has not the
prop. & the Ex has nothing to do with
it. How then can Mr Inman take cognizance
of a right of Bond, & this power cannot
but there the action is to be in the name
of J. S. Now if the title does not
vest in the Done it must be in the
Ex - & he in fact has the legal title
no other competent to sue, so, in
the case of a Bright he can sue the
obligee by virtue of this title can consult
& the reasons why in one case
&c in the other; and so I think he
to choose as any of the article, & the 2nd
all title passes to Done & legal
Ex. 3 Pr Wms 42. 3 Atk 214.

Actions by & against Ex.

Mr Action by Ex. There are cases
when the test. or Intest might sue
when the Ex. could not. & vice
versa there are many cases in which the test.
& Intes might sue & the Ex. &c
could not sue.

How what authority can we
the test. & may sue & Ex not? There
is a rule that Ex can't sue for debts due
to the test. The rule is that

Act 1st Geo 4th & General. & by the old Law
& measure liable for torts, but seems
now.

The Rule as it now is, as to torts
is, that if the tort was committed for the
benefit the est. he & his is liable
but if the estate was not benefited
& he is not liable — Agency is
to be made out that the act was injurious
not. but any as to the benefit does
not exist. Hon J. L. Haden & Sh.
on authorities agt State & Co, that is agt
and here Cain agt J. L.
Def. not the horse & killed him. The
& of Jo. can be sued. for the cream
But def. moved the horse, the Co can
will lie for the est of def. was benefited?
Must the mood of Indes & there
effect & on authorities agt & but if
he carried it away the Co authorities agt
By the old Law and lie in by
the above cases. The Law as it stood
is above cited & my instructions Atty
first gave in case for with & comp. every thing
& was radical & intended to state it now.
is, We find naturally think
that the authorities & lie for the injury done &
exhibit but it seems from 4 D. 9. 445
1 Com 241, 1 Rhett 30.

So that there are cases that authority

may be sustained for a part but in-
sist can it must not sound
in tort - but it is by stating the facts
varying the promise of a tort
Cow 392. Shun all the cases 2 Bk.
649. 4 Mod 403. 1 Lal 314. 2 Roy 971
1502. but it is not absolutely necessary from the
raised
as the Defendant stand when a Sheriff
was not a man, if he did the writ
did not it the Pl had to buy a new
& the arrangement. but by a statute
has an added Liberty of all the
State, it was enacted, that if the
arrangement to the Pl, but by a act
the time the arrest did not abate by
the death. Then D.S. being an officer of the
act Pl. State died & the writ does
to the writ does not abate survive
& if D.S. had died before the arrest
the Pl could not have
But if Pl had found the time
here is an act that Pl might
bring after that date. & so if D.S.
had commenced the act it would not
abate by his death, & it is only necessary
for D to enter his name on the writ
in the place of D.S. suggesting the death
of D.S. at the same time.

And it is the same thing in case
of an arrest by act D.S. who afterwards died,

Lut^ns ag^t Pl^ff; But in this case to the Defts
to file a motion to have a sci.
facias issued, to shew cause why the Pl^ff should
not be entered in the place of Lut^s
Pl. to make this alteration is the
of M^r M, a Dr^r.

There is cause on the present
Der the Act it is to be observed that all
along provision is made in favr of Pl^ff
But now here is a case Defts^ d^r entered
discovered after long litigation that
the case is good for nothing, & now
Defts is dead & Js. Mines is against
& then a sci. facia. but now Defts
Ex^r is entitled to costs. & there is no
provision here in favor of Defts. Ex^r
The Judge once had a case of this kind
to manage, but his client ordered him
to bring the sci. fa. he did, but
failed — "as was to be expected"

There are
some Contracts wh do not require to
have is there. Most of the cases is of
such a nature as that nothing is to
be paid, but the award was to be
obtained from the employ^r. as the
case of an officer who collects an Ex^n
he gets nothing from the employer
but writs a large a collecty about
of Rand, he owns no reward but the bill of costs

The ar in these cases does not arise, but in all the cases where you are obliged to give any thing, the averments both as to the part of Q^r Ct & C 5 Co. 117. Latch 188. 9 Co 87.

The only question in these cases is did the Q^r have title? if his title had not been commenced, & he did the averments, were not.

The Q^r may use in his own name as Q^r of the liberties where he owns the goods & not himself.

It has been a question whether the Q^r is obliged to state a grant. If there circumstances which might, or not all pleaded as far as the Q^r of Lein is concerned, Note that now he is not obliged to plead it for the presumption is that he did not have plead it, for it not an honourable thing to plead it

If he thinks he demand a jury on he may let the ar go after & default without liability to grant writ 5 Co 4.

The ar are afraid as the Q^r obligation to plead the Q^r of Mayor Bailiffs unsuitably by the Q^r might ask his own judge if they (counsel) write and the may. I send. any Q^r not

Att^ny & Ex^r & now say he did right but
in one of the Courts it is said Ex^r must
avail himself of every illegality but I
think contra as to Debts &c of good
conscience, but if the delay was
a dishonest one he would & ought
do right in taking advantage of the
Law. but I dont think & justified in paying usurious Rebs^

Adm^r & at C.L. is not liable for costs
Att^y of heirs in his own name & pais
he is, but it is advantageous sometimes to
sue as Ex^r when he has made a cost
himself & is entitled to recover
it 5 Bac. 234. 4 Bac 359. 2 Ch. Ca 8. 1 Show
69. 4 Bro P.C. 550. (2 Ba 445 same as to costs)

Lord 41, 42 Ba 446. 449 & Ex^r is liable for costs when he might have put the suit in his own name pay costs mem. see 1st page def Ex^r &c

So if a promise is made to Ex^r to
pay at a certain time (1 Bac 408 7) he may
sue in his own name upon it.

Adml and man was obliged to
pay costs in any suit or but by St
Statute a right to costs. Quod
not answered about Ex^r & Adm^r & so
they are now liable, being un-
noticed - but in this country they
are usually made liable by St.

Sheriffs an Ex^r &c not liable to
be arrested. a case once it was ruled
arrested a Ex^r in B.R. + Adm^r not
for debt in imprisonment. St case
was tried in this State, & the quest.

+ 4 Mod 59 & Diff
Colonized to Whole

that the Law of N.E. was not known here, but we found them to have that the L. of N.E. was so, for the C.L. cd be shewn here, the case was so decided here & shd now be so decided in Mass. Stra 682. 6 Mod 94. We had no L. Books of N.E. then 6 Vin. 91. Vent 92.

From what do Copyh arise in hands of Ex^r

The genl rule is that the Prop goes to Ex^r & real to y^e Heir. & pon the personal Prop copyh are pmised to pay all debts & from the real, they are raised to pay partic debts, & they are to be at the Heirs charge but if y^e Ex^r has Rec & Retained & pon Prop. Then wch he is to the Heir's cost and y^e use of Heir But then is a case wherein y^e Ex^r subject goes to y^e Heir & prove Heir Prop. wh goes to Ex^r as in case of a Park. The deer also & Hawk & Park are Heir Prop. but in y^e Ex^r belongs to y^e Heir & is mixed with Ex^r Prop in a pond & in y^e case of Warrens. & so as Pidgeons go when the House & Ident of Land. (tho seems to be Ex^r Prop.) but we see when the Land is sold, but when rent is Reserv during Life it is doubtless Ex^r Prop but after death it goes not to

Lovel 29

Co. Lit 55.

Upshot } Land; it is real & not
&c Profs. personal property and the land the
money and the heirs. The emblements
which are on the land at the death of
the Ten. goes to the Ex as her. Profs. not
withstanding it is attached to the Land; tho
after the man had sold the land, the emb-
lements and profs by the conveyance
By the Ed. act for life of another does
not go any where, but by a Will & Ex. to
Ex goes to the Ex, Adm. & there are some mat-
ters in this county, but most cases do not
often occur. There is no such thing in Com
Law they (Fields Ex.) gave it to the Ex. as her Profs
& no such Ed. of Ex. that is as good as any
Ed when it is made ~~Co Litt 55~~ Land 25-6.
The emblements are sometime heir &
at other real Profs.
It varies, as to what is Per Profs.
Formerly if the article was off
the freehold ever so slightly it was so
real prof. seems now it is confined to
what can be removed without materially
injuring the freehold & whether the land
is broken up there is not the removal without
injuring the soil 1 Atk 405. 2 Ba 410. &c.
3 Atk 13.
Grass growing is Per Profs & goes
to Ex. & then the rent goes to the Ex, heir

Lett. had owned the Lot it had descended to the Heir, but now in this case he holds it solely as the Exor. & then the annuity ceases to be Assets annually Cro. E 712.

Real Assets. if a man owns the reversion at the end of 41 yrs by the same Will devised lands of the Heir,

The Ct. knows nothing about the Incumbrances on the Lands of the Heir, but Ch. notes them Assets in hands of Ex. to pay debts

But suppose Ld had the Land not to him & his Heirs, this Rent determines with Ex. no person certainly as the Lease binds. The title rests in the Heir but he has an equitable title to it, & the Heir can't rec. the money due and if Rent will pay it, & on a Sale come it must still be paid to Executor & this reason Attorney Lease and Release was taken out of Lett. for estate.

But it seems that if the Heir could pay the Ex. the amt of the money due in any the Rent. 1 Vern 412.

Administration Bonds

Every

man who is appointed Adm must give bond for his faithful Adm. the Ex is not by

Adm[r] v. Bonds 3 Ed. allegd to give bond the
Ct. of the counties this & the power
2 Ba 379; Cath 457) Alexander v Hunter
1 Show 294. And have cognisance of time.
A man cant be arrested or became
bound can bond and diff[t] is compelling him
to give bonds for if he is under 21. we can
under this case as on Statute 8 & Rule 50 29
Car 4 466. 1 Sal 36. 7 Bond 76. Dun
1702. Co Lit 72. 315.

The Design of the Bond as ex-
plained by the condition is that he
do act faithfully but if Bond is not
forfeited in any breach. as the non payt
of debt & in some case a devastat
is not assigned by some, and a devast
if it does not operate to discharge a man
of a debt in law it is not a forfeiture &
of the same as said. by it and bond
if he does not distribute the goods is no
forfeiture for the Ct will compell to
distribution, But a neglect to Inventy
& the estate, or makes a false account
count, or Inventories is corrupt it is a forfeit
ure of the Bond.

This Bond is taken in the name of the
Judges of the Ct of Ld & as trustee of the Bond
& the same Attorneys is in his name
& he is made an allign to let the Ld &c.
sue the Bond

in order to prevent if they will go
round: not to make costs for the Ct.

Devastavit

If any one plegne a
misconduct by not the debt acco
pind, he is liable, (but he is not if
they are injured from his want just
mistrust = he liable if he there
was any fraud, embezzlement.
If the Exr of a executor of an insol
vent Estate, — the executor upon
act his own goods.

Remedies agt Exrs &c

Remedy agt
Exr & also when there is a Devastavit
committed, as if Exr dies & commits
the act is lost agt him as he if de-
clared of Exr. & then Judgt recovered
not agt Exr but agt Testators
& the Exr is not involved by a sum-
mons. & not by attach & arrest
Bail/Exr does not pay it & Officer
sit hold of his Goods, in this case a
action shall be made to Ct, that after
delay to cause and Proofs to a found
then on Judgt a scire fa. then agt
Exr & recovery is had agt Exr levies
Execution, Exr ends & Exr has goods
in his hands he can be sued

Remedies at L. 3 have upon plead plene ad-
ministravit & did not, or as I can say
& that the Lord was minors
& must he can plead nothing that
he might have plead before, but now
he can plead only something that has
arisen since the former act., as bayle.

And judgt in all cases goes out upon
ando executions for if the Ex.
had not shot at the time of the judgt
he may have afterwards & then he obje
may come upon the Ex when the shot
come in. It appears that
these cases then are two kinds of first
after the act. the other antecedent.

If there a recital of a deed of
a devast. the alone is liable to com-
mitt act. The com. made
false by an act after Ex of D
is false com. for then D comes & pleads
plene admin & then judgt for pltf
after verdict notwithstanding he had fully
admin. but no ni. facias. can issue
except in case of Devastavit, but
a sci fa alone the Ex. shall
retain mod. bonis, or if then is a devast
& then fi. fa. issues, & then the Ex
can not defend & the quest as to a
devast is tried, & the alone we was gui
ty is liable if a devast is found. & if
the sheriff does not return the devast

Ord C 527. Any thing in Ja 7 suppose it yourself. Ord C 651. 1 Dyer 210. 560 32.

In some of the States the Gr avoid deeds where adv & void & oppr the rich are deceit & by 20 to that at one person is, & this being done & free and honest can arise from it Ver 21 think it the duty of Jud

Repealing an Administrator

The first part of it is the Law of Nature & the second the consequence of it.

It was one to con that an adv'd never should let the is not law now 1 Com 263. 1 Bell 683. Ord C 45.

If now my husband of a thing granted by mistake or fraud, or on the ground that it was not what I asked or a thing that was not found, or refused or a contempt of him who had been appointed & he was not a man now no appointed & he was not a man & a man did mistake it may not be appointed when it was made with mistake (Land 47. 2 Ba 460 1 Com 263. 1 Dal 33. 3 Lev 55. 1 Vent 125) for by false suggestion, a suppression, a

Principal & Com[missi]on a second Will has been found
the Ex[ecu]tor can't act. he must still be a Ex[ecu]tor
of the second Will 4 Ld 293. 370. 2 Ves 911
1 Com 263.

Ad[mi]n sometimes revoked in consequence
of fact not then arisen subsequent to Grant
as Insan. Destruction of Jones by Drunk.
ness 4 Burr Ecc Law 236.

Ld Hardwicke unable to act on
act of Insan. Ad[mi]n granted in consequence
of his recovery Attorney Gen[era]l moved that
It was said that the appointment of a new
is a repeal of the former Ord & 460 Lord
19. but this does not hold as to all
effects & indeed it would be strange if it
it did ———————————————————

2d The Consequences of Repealing
an Ad[mi]n
Part of this doctrine
is unsettled. The distinction lies as follows.
If the Ad[mi]n granted to a
wrong person & the Ex[ecu]tor applies
it, If it is granted to the one who ought
to have it then all the intermediate act
of the Ad[mi]n are good. Case of his having
run in a debt, or the Ad[mi]n had made a sale
of the goods. the acts of
If this be revoked the appa
rently regular Ad[mi]n — And
any lawful act of the Ad[mi]n is good
& he might retain & put in his own
debt — & the — all settled Law, &

Def^t proceeds — I ground that D^r was not void but only voidable 1 Com 264 Lord 54. Cro E 450, 6 Co 18. 2 Roy 64. 1 Vol 35

Acc^o contra

Pl^t & Def^t right ful acts as all concerned, still if the acts wrongfully might not bind even if and the right holder could hardly, as, if he were a wrongful D^r he could give away the profits of land, but the land accrued to the estate on death but if he was a wrongful administrator the gift would not be good, and could for them and he could one who could be sued as a debt. The D^r being set aside Ann, Def^t appointed Pl^t his Ex^r & then made a second will and revoked & first & appointed Mr. C. his Ex^r. The first man found & Pl^t came to wife, & his acts as good & minister when found & Mr. C. proved to wife, are the rightful acts of Pl^t and to good. the not the wrongful acts of Pl^t. If the alone reason, but as Pl^t could find the donees Ex^r devisees Int. M.C. could not sue Pl^t because the gift was fraudulent & good as the Gives debt is the same thing as if done to Pl^t's Test^r — the deed would be void. & Ann Mr. C. stands in the shoes of Pl^t Lord 15, 6 Co 18. Pl^t was not Ex^r devisee but who he made & not Lord 50

2 Ba 411

Consequences of Art. 46, Gen. will also see I have mentioned the case of an Act'g Officer dismissed & would by Ct. or Inferior Informer. But now, the Ct will not treat the Adv. Gen. as a Party & if a Writ of Error is taken out to a high Ct. (as may be in all the cases,) & it is said that all the acts of the Act'g Officer are utterly void. — Good the Delta who has been once made to oblige to pay it as if he were by the act of Adv. Gen. Now I do not see here acting under an Act as in I done above, — the only diff. I can see is that there had an Action does not affect at all the ground of Judgt. Had, pretty this was mistaken — but in the last case the Judgt. of the Court of Error — utterly void — but one no diff. — but I do contend that the acts by Mr. Adv. (Opinion to that) were referred to the same as good Laws but the Law case of another Act is not good Law

But first that I ask done when the citation & Appeal was the only acts referred to, but I shd. now to find a Commission Gen. Ch. v. Kelly 2 Ves. 398

120. 1 Com. 264. 2 Lev. 90

Now in accordance with Instructions

said
is to the prop[r] record agt a debt by
the ct[r] wou ct[r] was asked on at
last, that an audita querela might be had
prevent the sheriff &c to whom
Adm. Board of James surely that there
are more good reas[s] why one shd be
had not want an audi querela, than
as a case of arrest.
& he certainly ought in reason to have
an audita querela for a recog[z] shd
that a debt shd be driven to the ex
agt by ca sa.

But there is a diff[e] as of a recog[z]
arst from a bond &c? from this wh
had we are to govern in, the
law is not settled, the debtor, for it
is presumed the law is known
a Penigun 2 Lam 149. 1 Mod 82.
10 it 21. 389. 2 Ba 412. 1 Sal 85.

This case lately arose when there
was a gaol mill & Q. Sam Ct, the Q
had done a great deal of business
& soon after the sessions was adjourned
A sd[m] was appointed & at a grand
a citation &c by the same Ct, & it
was decided as to the acts of the ct[r]
were good. A debtor cannot object
to the pay agt by ca sa 3 Bac 125.

It is said all the case to be found as
to adjudication by Sam Ct. were cases

Consequence of Repeal of 21 H. 8. c. 5. of Absolute Intestacy

Now it is contended that there were authorities which made (as supposed) void of course it is said what was done under it will still be void. And this case relates only to cases of Intestacy. And the power of the Ecclesiastical Court to grant administration in cases of Intestacies, Court may [illegible] the most eminent Lawyers of late years have denied the Authority of the Ecclesiastical Court over all dealings [illegible] of the Act is to be granted (1 Show 441, 1 Comb 76. 254 2 Lev 11 Mod 203 3 Salk 120 & the death of the man, and it is a will afterwards found it is void (Lord 49, 179. 1 Sal 2. 2 Ray 1210) but the acts of the Ex are good. And as the dispute is as to the authority of the Ecclesiastical Court, Decree of 21 Hen VIII is an express direction to it in these Words absolute dispute the Doctrine, 3 Co R 190. 1 Lev 158, 2 Lev 90. Com R 152.

When the Ecclesiastical Court has jurisdiction in these cases, doubtless cases, immediately the Ecclesiastical Court has all the Goods in his hands to the right Use. [illegible] he is called a Lawful 137. but it is said the Temple

acts finding it attain an ill
good - The time
which all these cases go by
that when I dft is void, all the
acts done under it are void, if
the dft is good, the acts done under
it are binding

Now assuming the Adm^r
said, that the loan is a part of
this the case will warrant
when he comes to be met by the
rightful dft he may ~~[illegible]~~ in
evid that he has paid the same
Norris &c &c (2 Ba & Ad, 1 Cowen 84)
as an Eq defence that is (1 Ves 349
Blow & 79) in mitigation of damages

It is agt laid down that when the
dft is void, we made void by what
that I debtor has yet to pay agt it
to look for the remedy to him to whom
he owed it. 2 Ms & Ba 130-1. Butler contd
agt this doctrine & said that the pyt
is not to be made agt. I dont
say that the current of acc will
support this, but the gentlemen
of Eq do not submit to the contro
But in 1 Ba 296, A affirms that a
pyt to an Eq defendt, the witness can
he must not pay it agt it the Eq
way that there is no means for
a double payment - 2 Ba & Ad

American Variations from Eng Law.

In many parts of the country there is a variation from the Eng Law which has been leading off.

The per. fund by the Eng Law is the fund for the payt of the debts, tho' there are exceptions. But in most of the states both the real & per. funds are subject to the payt of debts, but the per. fund is liable in all cases the prior fund.

The mode of proceeding there is, tho' the per. fund is turned into money & the debts paid if it is sufft, & not then the real is sold.

But in this county it is sometimes the case, as the Jurors used to return [illegible] for them to agree to sell the real for but this is not usual.

But as also the Ct. goes first & then the Ct of Orphans Ct has power to order so much of the real to be sold as is necessary to pay the debts, & if [illegible] sold the whole of it. If the Estate is insolvent then an average must be struck among all the Creditors. & when so it can not well be seen there is a Law of Lien for Cred. to bring in their claims

& at the end of this time the Comm.rs appointed for that purpose, examine the claims & reject what they think an unjust & from what is due
after due notice
& what they may think proper, & on the decision of the Comm.rs any creditor is entitled to a share of the proceeds in proportion to the sum of the debt a new average is struck & if such a discovered a new average is then struck. & on every discovery of a new estate. & demands unpaid neglected only to be put in on every average, & those who have in their claim at first average receive equal to & first. - E.g. Lady may bring a suit on a new discovered estate

By the Eng. Law, there is a mode of debts but by the Law of any of the States there is quite another & better arrangement than that the debts of the public & to be first paid & then the effects are distributed

When there is new discovered estate the Ex.r or administrator must inventory it & if he removes it he is liable to a suit on his Bond & it is in the name of the Ct. - & this money is to all the Creditors but if there be costs allowed

And when this is the case

American Variation. It is so in all the States there is no such thing as what is called "the Act", unless it be that there is nothing more than enough to pay public debts but the (estate) must attend in case of estate being insolvent, circumstances and there cannot be such thing as an Act of his own way, where there is an average Law (but if he is insolvent, it is by the C.L.) for he is not a subject of Act. for if you owe of 2d dear but you owe you what debt not count to dear what dear is Insolvent

At least we have the right of restraint, but he must be sued at his pleasure if there any thing he has wasted can be recovered.

By the Eng. Law. Any of the States a power to sell Lands to pay debts is good, but the construction of the Eng Act and not be allowed in the country viz. that it is not to be laid entire the for estate is all gone but as far as I have heard of it, the land devised to be sold, is to be sold first. If the reason of this is that we have no such custom as a Law who is the eldest son., this has been the decision in all the States in which the point has arisen

Duty of Admr. after Debts paid.

This is where
there is no will. If there was a will he
would act as Ex'r and have done

I am to notice
the Legislation 2d wh is the law of the will
the Ds of the U.S. as to distribution of
personalty & there point out the difference
of the Ds if Ds & provide. — the two is more
of the Ds of Con. will be alike to distribute
an est in any State and Union.

The Statute
Charles provides that when a man dies that
leaves a Wife & Children or rep. of Chil", the
what remains, after the payt of debts shall be
distributed thus, ½ to the Widow as her
Dow. the other ½ to the Child" or their legal
reps". The word "Children means
"issue" shall as I understand line, be taken
the literally of what it is not to be. — In this
sense it is used in our Ds — the term
of the act which I am reading
"issue"

We shall not be inquire as if there
was no widow & then the Child or
Rep". to the whole

By "representation" is
meant, that when any of the Child are
dead in the time of, then the Child of the
Child" takes what their parent and their other

descend.ts & whence by the statute there is no distinction between Males & females but if one of these Child was dead then his child.n wd take what the father ~~wd~~ have taken & this is ~~nothing~~ per stirpes. But if all the Child.n of Intest.e were dead then the gd. Child being all in the same degree they wd take equally or per capita, & they do not now take what their parents wd have taken.

The computation of kindred is by the Civil Law. Pr Ch 527. 1 Sal 251. 1 P W 41. 2 Ves 215.

Under this St. a posthumous Child takes equally with the other Child.n 1 Ves 156. 4 Burr Eccl Hist. 365. 2 Atk 115. 1 Vez 86. to the princ. above

See as to distributions per stirpes & per capita - the doctrine 4 Burns Eccl Hist. 365, the same as Burns words on [illegible] of Intest.s child is all dead. he [illegible] 23 3 or more, each having left Child. more or less, in the case where there are only gd Child. the Daus & Neph. being dead they take in their own right & not what their fathers wd have taken, & the Ctr will order an equal distribution & so the

See the same doctrine Saul 74. This rule on the descend.g line extends on ad infinit.m; so if I.S. dies leaving child.n they all take equally but if some of them shd have died before I.S. they wd then take per stirpes — save it wd be with gd. Child or gd Child & no Child.n of his own, they being all dead. 1 P W 27. ~~2 Ves~~ 215

and as long as any of the descendants can be found they exclude all of the collateral descendants line

There has a different system been adopted in some part of the union & all the children tgether dead the grandchildr have stocks per stirpes — but there is not a particle of any law to support this & it destroys the symetry of the Law. for the same words ought to receive the same construction 2 Wes 215. 2 Dall 50, 1 Dall 395, 1 Ath 455, in both countries

It was moreover since decided in Con. that the estate of Burke shd be distributed per stirpes, contrary to the Eng Law, this was long since decided. & it is an opinion by that they decided it under the influence of patriotic feeling at the time of the capture of St Johns.

It there is no widow & but one child that child takes the whole

Now we adopted the Law of Eng into ohio to avoid confusion by the new & technical terms & there pointed out in detail the course of descent & establish the Eng system pointed out by the Ld of Con.

The State of Ohio has been also interested in product.

2d Dr St Charles enacts of this is no more, than of the debts but the wife

Descent. Collat. shall take by & to the other
shd go to the next of kin & their legal
Repr. Who are the next of kin
they are those who are in the nearest de-
gree to the Intest. without regd to the
whole or half blood, or to males & females
or to the Paternal or Maternal side. 1 Dem 437 Leffp the case of
Smith vs Gray Surr. half blood con- a share to half
Decided they shd take as much as whole blood. & same thing
blood, for in computation we count does here held
Roman rule & to the whole blood 2 Dem
124. 10 Pick 59.

To ascertain the degree agreed
the Intestate & counted to the com-
stock or ancestor. Thus count down till
you come to him sought for as par-
ties to the Statute Rules. & the com stock
is fd & the Intest. to the down to two brothers. 2 degree
to Uncle Grand. par fd to Neph.
& par him to Intest 2. the com ancestor
Wife to Husb. 3. the degree
fd to Intestate & to Neph, com ancestor
2. to Intest son Child, 3 to Nephew &
ancestor & is the 3d degree Thus in civil
Rules & count to Intest. -
First cousins & Great Aunts & Uncles
are in the fourth degree
Ads. to I ascend to him. It is nothing to
the count whether no tying one for every
head.

Thos. St. construction cursed 1 Ves 34. 10 W 51. 2 Ves 214. 2 Bl 510 to 515. 2 Vern 395. Lord 795.

But most of these do not always turn if they did other and have diff. but the legal Reb. often come in for a share if they compromise with them, how there are to take the share their ancestors would have taken if they had been alive. Ex. gr. The means this to go on the Brothers & Sisters. Richard, Sally, A & B children of Thos. Ego dead, Thos as he and his mother had been alive, while a Bro. child and the 3d degree they take what Thos. the father and his mother & not they. Ante the Brothers. & they always take per stirpes when some of the claimants are in a nearer degree

at L.C. death Rich was, also dead and Sam & Co. his child now A & B the child of Thos both a share & L. takes one share & Sally one, but the shares in right of one equal degree, that A. & B. did not take per stirpes

But Sally also dead that A & L. as all the Brothers & sisters are now dead — & are declaimants in all & of same degree in take per capita — That the case see 2 Ves 215. 3 P W 50., 1 P W 595. 1 Ca Ch 455

Descent of Estate of Bur[illegible] Gen. & Ed. & a Rent
or two a living & are all in the same degree
with the Children & Issues by Representation
of - but all take equally 2 Vol 213.
1 Atk 454 & this distinct the former distributes

But G[illegible] Gr Estate Settled & living when
the 3d degree arose. he comes in for a share

& L L
Words Share shall be rec. Rep[n] of the Brothers
& Sisters Child[n] tho' they only take as
Rep[n] of their immediate ancestors as
Children of those who & A & B Children
Thos. &c. of Rich[d] C & D of Sally. at A's
death & one dead had Child[n] those
Children take only. the Rents is di-
vided into 5 Parts & distributed to all
but those Children viz B. C. D. E. & F.
All are dead but E. each dead
Child[n] then E. takes all & effectual
excludes all the Rep[n] of Children of the Brothers
Sisters Thos. & Richd & Sally
But all their dead - there is there
remainder by Statute as next of
kin. but they cant enter by Rep.
resentation. 1 Vern 27.

The construction of Statutes that as
no Relation shall be Rep[d] beyond the degree
as children shall give & Ed[n] those Child[n]
Gr's dead. there Child[n] are in the 4th degree
stand in the place of Rep[n] of Ed[n]

1 Ves 25.

1 Dr 375
2 Vern 233
Dr Ch 9 S.

2 Vern 233 seems to be the last time
reported & is not considered as a decision
for the Statute of Limitations
though the Statute
as cited 2 Vern 233

was also decided that the Child's and their
assigns of those who were no means
There is but
one single departure from this system
in the Law & the more humane
& the British Court of Equity
as of Law decreed. And the Court
did therein restrain the British upon him.
we find that all of the Legal Degrees include
all claims that Part of the Law may
in the 3d Degree — will not the Statute
with Equity —
It is said
Brotherton does not take the first Degree
but the Law & Court of Exchequer
the Bus. takes for the
Vid the Court Father to the exclusion of
all claims him. And though
it was, that the rule has limited
with the exception of the Brethren &
the Brother & Sister to the Father 1 Lucas 57
1 Dr 31. Now the Father & Brother's
same degree were not fined entitled
Bradwell did, in the case of Exclusion
Quarter 1 Ath & Colm 1 Ambl. 99 & Hard
who always that the attendance
on a court & of the mind of the dis
in that case the Brother
& Brother & the Father & may be con-
sent but that is wanting & doubt
& Griffin L. & decided upon the
next more decisive.

Descent. Collat. If there was no Wife the
whole must be distributed in the
same manner

St. James 2. c. 17. This
Act alters the Law thereby, that if upon the
death of Intestate his Father leaves the Mother
she shall take with the Brothers &
Sisters, whereas by the Law she
did take the whole. And by this Act
She is degraded from 1 Moiety to 2 Degree

But upon Exchr. Bank & Lull an all dead
Man the Mother never was heard of. Nick
& the Child of the Bank & Lull with both
the Uncles — And I am quite morose
But if then child an all dead she will
exclude all the Heirs. the
whole of 1 Degree 2 Bur 1044, 1 Atk 415 & Moly vs Lovley

If there be no 2 Degree & M. G.
Father living shd he not take with the?
Lds man said the 1 the 2 Degree only
with regd to Both & Half, & as a part-
ner of the 1 Degree, & does not exclude
the G. Father

If a man shd die without any
Heir. an Esq his estate shd escheat to the King but
as we have no such Law to do. & Act.
Attd does not provide for its Demesnes
if the Ds have not provided it is then
to a first occupant, Attd a Casting

cent admissis thereon. upon the estate

The W[illegible] of
the Law of Ba. & Fem. may have per. parts.
V. of her choses in act. have not been collected
during her life they cannot be collected
by her Exrs. after her death

By L[illegible] Eq. & Hen. C. —

The Exrs is considered as the person who
ought to administer upon her estate. & when
the Ex. Cha. was under the Exrs was oblig'd
to distribute the estate of his testatrix as
the Ord. but the Eq. Ch. gave him
the surplus after the debts were paid
to be taken as Ord. & therefore includes the
rule of Eq. & take by Ord. himself.

How it may
be that the Eq. Ch. has come to do
it otherwise not. But now when
the Eq. Ch. is not to be, the Exr. by
universally adopted he is obliged
to distribute the surplus — This re-
tion may arise in this country & Ct
Pol. Eno C. 106. 1 Rawle 351. 2 Watts 520.
How where they have a statute similar to the
Eq. of Car. the Eng. Law will prevail, re-
ver of one but the Eng. decisions & Ord. must govern

The distributory share vests instanter
on death of testator 2 Watts 119. for if it
did not vest immediately it would go to other
relations.

Descents. Ballard } But a child in ventre sa
mere and thus a Mem 710. & the Instit
utes in him immediately 1 Sal 229.

The Roman Law supposed that
at a certain period of gestation the child
was in the Womb as an anim-
al. This distinction has not got into
our Law. & Stiles it and Swinburne
Shilosophers Doctrine of Animation
became animal 3 Swin 49.

But if the child dies in the
womb the first distribution (at 7 years
of age) the Estate does not vest in him but
stands for his heirs.

Previous to the Act of Geo 2d
Marriage took the place of Settlement
being deemed Lord 7 4. 1 Burr. Rep. 349
for the most part the same as the first
degree — If the Estate was limited
of course as of the 1st degree but it
all goes to the Father.

Limitations of Geo. 2d to the sisters with
the Brother & Lisle. It is treated by Burrows
as one.

Application to the U. S.

In N. Hampshire

The descent line is precisely the same as
with us & the U. S. but differs from that
of Ballard — & ancient lines as to this

of J. S. dies without Issue & under age
the Mother takes nothing but it goes
to the Brothers & Sisters

In Vt. it is
same as to Ill. & Ch as to descent
Lineal & like the N. H. with Addt
of giving as many, to the Males
& Females of the collateral lines

Illegitimate Child may inherit
& part of Mother's Estate intestate

If the Woman has a bastard & then
marries her Husband makes the Child
the Child become Legitimate

In Mass
In the Descent & Distr. as, that of
Lineal descendants to the exclusion
of the ancestors & the descend
ants of the more distant claimants,
but amongst equals
the nearest in degree excludes
the more remote & that representation
excludes ad infinitum &c.

In Rhode Island the
Law is the same as to Ill. & Vt.

In Conn. it is nearly
the same — in the descent & distri
-bution the same, but both Lineal
& the whole Blood are preferred to Lineal
& the half Blood, thus J. S. died
seized of Real & Personal Estate & left
Issue A & B his Brother & Sister of
the half Blood — & Issue of a deceased

Descent: Va. L. L. Rowsdew of ½ half blood
marry Lt. Ch. My Ante equally with
the whole Blood. but not so in Con.
and so if you come across a case
of the ½ Blood. one of the whole then
of the whole Blood takes. but if the
½ Blood is of a nearer degree than
the whole Blood. he will exclude
the whole Blood.

N York & N Jersey D.
affirmed as the same as it relates
per Inst. as to the ½ of Ch.

In Pennsylvania no diff.
a Demand Line, but then is one
to the collat & ancest Line, as if
the Per Prop come to Intest — the
part of the Mother the Father shall
not inherit if there is no Father
it goes to the Mother alone (And
shd with Bro & Sis), Where
it came by the part of the Father
but under 2 Ld of Ch. stood as to
the Brothers & come how it will
if the Bro & Sis are dead

The right of Repr in Penn. con-
tinues on ad infinitum, the ½ Blood
from all the ancestors, & the Issue
in the ancest Line can take, as long
as there is any child of Bro & Sist.

If there are no Bro & Sis &

ofsin, & then goes to the next of kin
& their legal Representatives. & the Father
& Mother be dead.
They say no distinct to the whole blood
from to the half blood. ———

The 2d of Leda.

I donot know what it is as to per both
but I do as to real est — Lo with Ver.
& likewise with N. Carolina.

In Maryland
the descending line the 1st, & the same
as is the 1st of Eds, But there are very
real differs. 1st Does where a man has
a Bastard if he acknowledges the
Child to be his he is legitimated
(if) there is no Father, or Child or
gd Child, nor Brother or Sist. a Child
of them the Child can take the whole
estate personal & this wrong but a
right to Father 2d In the
collateral line it goes on ad infin.
with Both & half line, but does
not stand to other collaterals — as
2d wife dies leaving a neither & gr
neither, the gd neither will not
take by the above rule 3d ch 1st line
all ancestors are postponed to collat:
so that with both sister & Brother there
latter as under 1st Ch, take nor
other, many can take. 4th Posthumous

Descents. U. S. Law. Child can not take if born an alien, but under 2 Sts. after his father — Illegible there no wife Virginia

Ohio the rule of Diff. I can not Com. to Brothers & Sisters of whole Blood & those of half Blood. Whereas your Brothers & Sisters of half blood of the same degree as the whole but not so of different degrees. Next rule,

South Carolina, Here Diff. in the descending line, & when they all stand in same degree they all take per stirpes & never per capita, & this is the first instance of this, I know of. Diff. as to Maternal & Paternal lines. If there are Brothers & Sisters & a Father they all inherit together as the Brothers and with Father under 2 St. Jas. Where there has been a Will made & afterwards a child is born, the estate being all disposed of by the Will. Law St. provides that Child shall have a share with the others — like a Posth. child under 2 St. Ch. Diff. when there is no issue & none and one line or both ends to this Child.

the widow shall take 2/3 of the estate
but where there are both the 1/3
def: if there are both the half blood
& the whole blood the whole blood are pre-
ferred. def: the child of both the half
whole blood or that a woman marries
with both the half blood.
so that the latter are degraded.
def: ~~it~~ in collateral lines they take
per stirpes & not per capita as in
the ~~same~~ descending line

Rules which apply in some States & not
in others. Inheritance
in all the States the civil Law is the
rule of construction N. Hamp. Mass R. I.
Penn. Maryd. S.C. & Ohio have
expressly directed it to be by the civil
Law. In Ct Conn N.Y. & N.J. have
adopted no fixed computation but
the Law generally understood

B.C. computes by the Col. law
as far as the 6th degree. The mode of com-
putation is to find the Com. Ancestor
Gd. to Father. Thence to Uncle Gr. to
Son from G.F. to Brother. from Uncle
Geo. thence. & you do not go to the
common ancestor

In collateral lines, all the
claimants a degree from the
Intestate does not go beyond the 3d degree

Differ. among d States in Vt. Con. Mary. Va.
Virginia. Mass R.I. N.J. Penn & Del.

In Penn Mary & Va. & N.J. it is extended to both d. desc. ad infinitum.
but not to the collateral

In Dela. it is extended into collat
Line to d 4th degree

In N.J. it descends to d Child of d
Both & the st kindred are comp.
to by the Ld.

The half blood inherit equ
ally with the whole in Vt. N.H. Mass.
N.J. R.I. N.J. Maryland. & Carolina

In Virginia the half blood take
no more than the whole blood & but
be interm with them

South Carolina the half blood
portion the degree as a member
of the whole & equally with a Bro.
of the half

Advancements

If a child has an Adv
ancement. (the Ld. Advert to
it & if not) & Vt. & every State in the
union has an like it & from his
Estate if he die intestate by the distri
bution he must bring the advt
into hotchpot — but in most
of the states it is provided that what
was given by way of advancement Estate

Ld Ch. Eq. Ld

he sh. not [illegible] but an allowance shall be made for it but it is not enacted as a part of the Statute of
The Statute 27 Eliz. c. 4 does not mean a good
old fashioned Sunday with a great
many things one must not do
Whether comes to the child by
other means than that of the father
need not be the test into the statute
but as inheritance from the father
What this is
Admont by the Eng. Ch. Whether
a gift by way of Portion will
a parent out a child in the case
as settl out a daughter, but
money occasionally given as for
education or maintenance
it is said no in Eng Law but qu
how far could the money often
did in education as a provision by
Ord Ch 170 1 Vern 446, 2 Vern 434
Pound and Lloyd 4 Ves 2 Ves Eq Ca
Ab 249. 2 Vern 2 38, 2 Wils 435, 2 Ba 430
The value of the thing advanced
at the time of giving is to be taken
not at what it is to be accounted
The Law of
ad Mats - diff. It in Mats of the Ch
Cicle - found charged that - the advan
at not it is charged
If a man should
a Will & then die but had a distr

Jesus Jesus Jesus Ly
ve Heaven is a haven where we
ever rest. Summer dead winter
Death Life must be made
away to life with Father. Finis

Assumpsit.

by Judge Story. Aug. 17th 1847.

An Apt. is a
promise to do some act or abstain from doing it.
It must have a consideration must be legal & mutual between
the contracting parties - The object of the obligation
ought to be something actual & not an
opinion or speculation.

Contracts are of two kinds one is called
an express Apt. or Contract, implied

Express is when
the terms of the contract are settled by the parties &
Rules of damages by the Court which is a guide
upon trial by Parties either by jury or by Court.

Implied is when you do
not definite stipulated terms & the
Court, & there may be no consideration
but if there are circumstances
between the parties & justice demands it
are sworn and by a sum of money to be
ascertained - Justice alone is the foundation
of it, as where A. a horse for $60, & B. refuses
& pay damages & action &c - But mutual
promises to do a future thing such as
doing something - this is made a consideration
& if A. refuses to do so B. may - to sue
for not performing & the law will
imply a promise - And on
implied promise will the courts ground
justice - & action is brought by stating the facts &
saying a promise promised &c & it was

Bailee. — for if bailee sues trover. So in case of Pawnee. the money gained by suit may be recovered? & if one has overpaid a debt is he entitled for the surplus.

An object that is under object or something consumed. So all consumable goods from which by a sum of money either may the bailee & restore a given in weight, the ground of it is the indistinguishable. All that is meant by this is that it is just as valuable. —

Into absence of thing of a special nature I shall not enter any further for object of the lecture to begin a general view of subject.

Debt & obligation must be that A is the one to whom B is to pay a sum of money. Debt is sometimes called a specialty debt. Then there will not be any specific sum but it can be ascertained by the jury. It sounds in damages. Any obligation to pay a sum of money may be sued for in trover. The contention in such case must be quite a proof against a positive agreement to pay. If sealed it is covenant.

If a sum of money may be sued for in damages or damages were ascertained & indebitatus assumpsit might be brought.

The principle on which the objection is founded is that parties have agreed by the contract to fix such case & the rule intended was no further than to enforce it & for parties are bound to abide by their contract

Letter of 7 Oct. on Insolvent Act. is founded on the justice of the case.

It is said that in case of an insolvent's effects ground of action cannot be found but a mere misapplication of term - but there is no doubt that there are cases in which an action will lie against a man who but owing to the time is not due

has wife and effects does not pay his debts for months and refuses to pay the debt for which a Bailiff is issued. The truth is, if you can commit a crime under the Law & pay the fine in a month or two & come out innocent of felony & intentions - so the Law of Bailiff sometimes does cases, or exception to the rule of justice, as,

One case is when the Bankrupt has fraudulently obtained the Goods of many a man of quality & the Law prohibits paying Debts due until such by the Attorney General has been heard for the insolvent but is said to either attorney may [illegible] against the Bankrupt. So in a case of smuggling - Money is paid by one it cannot be recovered back again altho the duty found is not found - but in these cases you

cases both parties are supposed equally guilty —

But if but one only is guilty the enemy may be laid against him. As in case of enemy. The common gen.l does not relieve against the under common thereof against the common. But in this case the common may recover back the excess of interest? But this is upon equitable ground — In this matter par. Lt. Chancellor Jurisdiction of the Court to relieve against penalty to law.

Obj.n The law forbids a man ever to receive any money for signing a petition of a bankrupt — for if he was a bankrupt he ought to sign it without reward & if he was not he should not sign it at any rate, — A case of this kind arose in the city of Phila.a & a reward was offered & the Act of the person & was sued upon the action and recovered upon principle, but the Court of Error 12 Lit 101. Long 99 Am. D.R.N.P. 133. 2 Bibb 45.

In all these cases in which a sum of money is agreed on after, under a sense of debt due, although the debt has upon any equitable ground of use — This was the ground of action to get rid of agreement in law with no, [illegible] that he did not owe it being in his neighbours to swear true

(and the ground of inserting the clause in the def.n in appl. that the fraudulently &c.) The act of appl was created by the St. West. 2. 1 Lit 80.

But there are certain cases in which an act

an action of debt cannot be brot. as when the rent
reserved upon a lease of land
is payable at a fair or market, or in case of double
rent payable after a demand, no demand
before the day can entitle the party to
an action of debt for the rent, but after
the day a demand is necessary to entitle
the party to his action of debt for the rent
for the reason that the rent is not due
until demanded, but in the case of a man going into
a tavern & taking up his goods without agreeing
for the price, an action of debt will lie without a demand
because in this case the debt is due
immediately upon the taking up the goods
without any demand, for the reason
that the debt is due immediately upon
the taking up the goods, & the
action of debt is brought for the
recovery of a debt due immediately
upon the taking up the goods.

But an action of debt will not lie
upon a contract to do a collateral
act & if upon the non performance
of such collateral act the damages
are uncertain, as in the case of a
contract to build a house, an action
of debt will not lie, for the damages
are uncertain & the damages are not ascertained
so as that the debt is due immediately upon the
But if
there be a penalty given, action will
lie, as in case of bond for performance, & debt
or indebitatus assumpsit — lies for a sum certain
damages, & price of goods sold & delivered,
& quantum of damages.

But he against whom the proof is by parol, as made
a false representation of land — Quaere there he can
recover by quantum valebant. I think he can
recover by quantum valebant. And so action lies
does lie.

The consideration of the bill is not such
proof as ought to be required in order to
found an action of proof may be had — If

act. goes on the ground of affirm.g y contract & requiring
the damages while indeb. assumpsit goes on the
ground of disaffirming the contract & demand.g his money.

So if one man sold to him a horse and [illegible]
[illegible], bought, or this will lie, or, assumpsit may lie both and
the other may be waived but, the horse must have
been sold or assumpsit will not lie. When there is an spec.
assumpsit & deft does not fulfil it, you may either
treat it as a contract & bring the spec. assumpsit & recover the damages, or
disaffirm the contract & bring indeb. assumpsit & recover y money
paid by pltff, the same. So that if deft treats it
as if there was not contract, it is always y
case when he does not fulfil it, you may
treat it so also, & so you pltff will recover in indeb.
assumpsit & recover y sum specified & paid [illegible] in
this action the money must have been paid.
& so contra you may sue him on y contract [illegible]
there [illegible] in on spec. assumpsit & recover y
damages. Bank stock case.

If the action of indeb. assumpsit were con-
-nected with the spec. assumpsit the some-
times tends precisely to the same point
& sometimes not. As in the case of an agreement
to transfer bank stock the money was paid
& deft did not transfer. assumpsit goes for
the damages, indeb. assumpsit goes for the money
paid.

Is the same thing whether the agreement
is by bond or a warranty

It may be said [illegible]

a remedy that the only action that can be maintained is the Legion a civil action after the money has been paid —

Then as again all can return it is just a right to bring to trial an attempt to punish a man under some thing. Nothing intervenes. an action of debt or assumpsit lies when a party is entitled to a thing & refuses to give it —

To and return a verdict, he fails with this, and not found as in case of a verdict of Jones by Jeff & Thos as in Smith's case, money to and an indict. after an implied promise that return Jones & Smith, a man moneys — Thus universal. 1 Lil 95.

If money to be paid for a collateral act & a future by indict after will not lie — contrabanile

But if an agent to make deposit a certain sum in collateral & that a not fulfilled as given time from after a indict, or debt will lie. the form of the action the same where against a one is a trust is in writing or parol; this if the agent lie in writing as a note, an action when the writing be not with proper, & it may be given in evidence

Under the general issue. the action debt, on a contract in writing in a contract in writing — now in Mr. L. of S & R. Law good for money, — now

matter in writing or not
it does not allow in Pleading, that can be found
for deed is not writing without it is to be
proved. Howsoever is not stated in the decl.
Especially it is offered unless proved, this then proves
the contrary of it.

Bro. ag. Ld
contract was not within the Ld of 1788. but
it is made in writing - now in an action
thereon, the writing must be in evidence
tho' if no writing had been taken it might
then have been proved by parol - but the
best proof must in all cases be adduced wch
in this case happens to be a note in writ.

Whenever a contract either by deed
or in writing is attended, and annexed unto a land
the right of suing on a simple contract or in apptt
ceases, destroyed & is none more.

When the land ceases precisely the same thing, as the form
ever did, the action of promise gone. But if the
land was given not to enforce performance
of subject of the bond - but to compel performance
as much as of an annuity, the distress of Barony
or the land to answer. The penalty can
a Baron. to pay 200 for a Baron. after was held to
pay the price a bond. to Baron. is now waived, but
in case of an award. If a Union bond is given to en-
force of an award. pr action may be brought upon pay.
or bond. but if pr bond is given after the award of

the ar: cannot be taken the Court.

So a promissory
Note may be attacked as usurious as where it is given
for 140 ℔ & he gives a Note for 100 ℔ & Bond
is good for nothing for the Bond merges it.

The ar: of Pindell
after it extends over so large a surface may be
remedied by a writ of Error when in
case of money & Constitution & Jurisdiction of ar
& that it is unconditional to affirm & hold it.
& Error to the Ground of ar:

Motion & sur: Error
that money rec: shall be remitted & of judgt
of a Ct commanded to be reversed back. However
in any the judgt may have been — for
is not may of recitals of judgt should be
reversed it is or if a case has the Court
misinformed

The Rule given
commanding back money & ground of
the incorrectness of the judgt — It could
not back any a ground not done
not in Court — the judgt of Ct. case of
this very long a cent: so long ago the judgt of
Law stood lost: & no Just: commanded judgt
of Reversal — after this the Ct returns
that money may be reversed back but the matter
of Error is not in case does not ap: —
Reversed the judgt of Ct: sustains my demurrer of ye
Court pro.

So of a motion & plea — Error
Read

heard of, a Bond of any under Guarantee
amount in which and the Death Certificate
attesting to the entire Satisfaction
of the Returning Officer that the
on the ground
that the military attendance does not im-
mediately affect the Election

Agt. A Sheriff is bound
to pay the money in an estreat from
the Exchequer into Court
now the Sheriff has a right to make
of the amount of the Writ
an Affidavit stating that no
Sheriff need not look to the
Sheriff for the Debt and Costs
but can look to him
but cannot issue a Fi. fa. against the
Sheriff the Enactment is confined
to money. Except any sum of
money in indebitatus
Assumpsit without stating
the Judgt by which it was
1 Str. 401. 112.

Action not of Trover can
not be brought against
Wms. 1521 n. 1. the Sheriff for Debt
1072. or Damages
a Judgt against
them any Judgt 1 Str 534 Sheriff
money during his
Year again.

By Act, 43 Geo. 3
a Man gave an Annuity
of £100 per Annum
for a Term of Years
Held that
the Grantee
had not a Freehold
Interest

able it is not easy for the annuity
to be paid no longer than the life of
Tenderden and if altogether at this rate
the debts of the Bishoprick will be
[illegible] Parsonage & Dr. Downe [illegible] can not
even before the Chancellor out. The Income
of the Parsonage is good the latter half in
money now [illegible] to increasing consisted with
on the land - but the corn rents is idle
for money had & received. Forgood
sold & delivered 1 Feb 1792.

So many of the
sale of articles are of no value but
no fraud in the transaction, more or
our of fraud will not lie for that is
none but the money being paid, this
our of money had & rec'd will lie - for
that must always be a good bargain -
but of the articles sold here of none value
and lie upon [illegible] warranty, But you say that
another action upon the case will lie it is
as a [illegible] warranty to the sound
or any sale of goods.

Debt for [illegible] will lie
since you say [illegible] and one
was a end of B. & Lord & Lane Lord's
bringing money - it was for the attorney
ney fees of the colleg. Affirmed & bye
our act to recover it - the case was and
10 R.S 97 62 & B must have it Lil 91 96. 2 Atk 4.

Rule pointers to the Jaine as a rule
that they are of an assᵗ. being appointed Exᵒ
and paid to him a note as aforesᵈ. disavowed
to have known of him agᵗ. - & sent immediately. -

Thomas all the cases of Exᵒ & others stated
& made to the Master assume that the
executory is a person entitled under and of
3 Bac 125. a specialty, he can not be compelled to pay it agᵗ.
by the said judgment & allowed the Master
& pursuant will warn the debtor, & the
die & after. & is the debt of Exᵒ & others
out into goods & the debt assigned & then
is not over to Exᵒ. Where any of the
as the debt & assigned grants & specialty
Ex & this is the only matter 1 Ld Ray
742. - but the pointers are from a
case Peters Jones

Promissory note
1 Salk 27. taken from a man by any other in
Prison of any kind - the note to
allege to they took the money - & it
ac is as bond &c. & of equity &c
cases of this kind &c & of him note do all
as if Eq. in relation agt. a bond &c. under duress - & suit &c. as to usage & money paid. — Equity ind. (a) case of stations, a person
stated to a certain sum - the time of indep-
ted Jefferd - the Defendant refused to return
with the Evidence of the Jews - of Jews was
made - the said Attorney & then kept the
ac for &c. & &c. & costs - & was &c. The &c. the
case the Plaintiff brought Bill to a &c. & shows

Sup 15½. Ent in court can be set aside for
the Judge's misconception of a contract made
upon by error in law.

Amoriaban v
Anit the Ad[m] took him upon his own Debt
his Prop[y] into the hands of a crown Receiver
to be delivered to him upon his not doing
so by a day & he not doing so and the
Ad[m] could not recover upon (2 SA 763.)
for in an action after debt & Judgt
by all the other cred[s]. 1 Ld 76. 4 SR 166.

Payment into Court
is a tender that subsequent com. on
account never taking Payment
out, but is to entitle, whereon
the Law presumes both parties the
money cannot be recovered back but
if only one is dissatisfied the other
may recover. Case of illegal insurance. The Ld[s] con[s] 2 Bl R 1073. 1
Bl R 65. Dow. 796.

Money
rec[d] on a erroneous judgt may be recov[d]
back on the reversal of the judgt - but in
cont be recov[d] back on till it is reversed
3 Bl 161. But if the judgt was void
com 419 one is to a record to be set aside
immediately, as in case of a judgt rendered by a justice
of Peace & cert[y] this doc. all acts under it are
void Bases. —

Where money is paid with a design
and promise of true intent and
honesty upon the Buyer, a reasonable
tender,

It is also given to persons unable
in fact by law to Contract as Corporations
Infants
persons under Duress agent the wages
& made a good tender to the agent to
the Principal money to and the Principal
agent to pay Cash - If the principal
agent under act might be but to
obtained a actual one

It appears you of your estimation
the agent within 20 Dr. will
be Refused no person of money
under act but this, but if by virtue
of the agent in a collateral act upon
act above this - proof of insolvency alone
suffice. And with you have this money
you have arrested the your money under
act will be - this case is called a bill to
stop and prevent Payment

This act is not to all bonded
or accepted but upon equitable principles
of indemnity - Upon the ground of justice
where it is that authority to take a
Person who does not bring with the
and, he shall be suspended to stop

3d Person of the Verb a concord of the nom
Plur. D. - but D tells the Horse that is present this silent - the comment
answer an idle
adopt of punct.
day? Gen vide Lond Gyne we can
in such a case we Scripture a duty the
an action is alleged to lay for it
then are after cases in which the words
to alleged to beg. come a person than this
wife and of course - it must lay for
Gen: with are permitted by a stage.
On a petty Jurors this child dont to stone
in the street - to wife to alleged by
Mr Child to Lord - And for burying his child
But suppose Wane - D may - & the
Boys & Dell - now Count means of.
The action is the person entitled must
be written to the duty for to dept not
is performed for him by writ - &
so in the case the articles must
be mutes & the dept must have ben
able to perform the same duty. - And
so an infidel. apt his testimony
on my trial and & then dont for his use

Here

there a plea - cont of such as is always
an implied warranty of title. If you
to title & bad. cont may be used either
dept for the many Bad Ones? - my
men that a title implied upon Ex 5 Dun 1809

an action
an of wife after is true on the men

[illegible] entitled [illegible] to [illegible] by [illegible]
nor damages as [illegible] recoverable —
A writ is a quality of this action
in it differs to subject to all equitable
set offs, as in case of the writ to recover the
money during the period of the
time of the creation. note the case per
curiam to mean of the writ (1 Dall 67, 78)
so may also a claim of the former as
it may be set off against the creditor's claim
Salkeld

Whether this action may be limited it is
es. Where one cause can in such case
be set off. Prima facie it can be
a mere claim right of action &
Ld of money and not allow him to
set on his cattle. he accordingly
to shut them in on pay of sum of
money — he paid it & then took
under Act. pr of mony — action & set
and not die — for by title of land and
a third in pd as.

But a mere debt, a claim for unliquidated
unliquidated damages it of this nature
are not pleadable. It must be a debt
the claim was ascertained. Natural damages
the wrong are made certain by Act. under
Act. Reserved — 1 Dall 114, 113. 1 Bl 133.

But affirmed a man fit for a set of
horses with knowledge of the bad them

of a year from after buying the Horse he was to take a Mr. Reeves & by them returned to Stroud. & demanded the money. & said not to be a set off Reeves. but a refusal to return the money he had rec'd. after. — & the action was not sustained — This case differs from the present in y'. that there the contract was complete — Here it was on S.C. Doug 23. 1 Sel 113.

Assumpsit on a promise to sell a pair of horses. the vendee warranted them to be four years old & it falsely & fraudulently then & there if they were over that age. they proved to be more — yet never had the said Horses for more than a reasonable time — he then tendered after for the money & had paid. & the Def'd. he did not receive as he said he might for more than a reasonable time — but he was suffered to answer on the implied warranty. the damages arising from the diff'. between them & the warranted age — for this action on the warranty sounds in damages.

This action arises from the sale of Horses & that being many injuries for which there was no remedy. this action of case was brought to recover damages for the deceit.

a short note was given for a horse & suit debt. & sued on it for horse & promise

after the Def't. had agreed to pay the debt the jury upon of which (Sales) was he sale delivered to the Def't. upon the Def't. [illegible]

specific "in a certain" than as to apt & yet there is "more apt" etc. more nearly that, & is not liable 2 Bl. 143 Peng 107. 8 Wilson 112.

If the a man undertakes upon a th may give performance in mid.

On Q. Pleb a stay of Opts dies any on an of these agreements, - the agst is the ground of yr ? rule of damages.

The Lord Opt is found a moral ally: & they it - Where there is a delighter a else then an implied promise to pay O.M. P. 128. 2 Bl. 553. 6 Mod 181.

Power is necessary to presume a promise at all in this & in the Opt for in many cases in wh it the d and is impossible to presume pmse. as in case of prom.

Under this a upon breaches & damages are not ascertained. Quantum is the only provide but the sum to be recovd is that wh equity and in justice shd be recovd

And as in case of partial performance or entering into a stay of stock goods &c without enquiring as to the price. - It might may subsist indeed. apt. for the price wh is ascertained by the market price

It is the practice in the
Mch. a. practice not indeed usq. i.e. in
a mortgage after even though a note,
for the debt must be upon the
express agt. agt. 1900,

Now there are some cases and
this case is quite not the usual decision
given and even that is not the
first case. It also when the [illegible]
[illegible] case collateral from?
as a covenant agrees to build
a wharf in a certain time under a certain
penalty. Afterwards the action brought on
the covenant or the wharf recovers damages
agreed and indeed after the recovery the
penalty - This may arise in which there
is a penalty to be indeed agt. while
the recovery is when forfeited.

But there are
cases in which nothing but penalty can be
recovered as Debt does not lie election
some for in or the damages + 5 T R 609
Here are cases when the deft reserved to
himself the right of failing in performance
on condition of forfeiting the penalty - It
may however be sometimes difficult to determine
when this is the case

Debt is an
action very little in use and now
but indeed agt has taken its place 3 Burr 1663.
Cow 116. 796. as in case of goods sold

1 Selw. 80. & n.
1 Wash. 170. contra
1 Granch 499.

The Jurisdiction that is laid down that courts of equity will lay no case where debt and not lie is applicable unfounded Ruse. 1008. 1 SR 285

When a man has obtained money by fraud you may either sue him in an action of fraud at affirm the contract & you may recover even money 1 SR 588. Limited of the disaffirmance of the contract

Where a long time a question whether you could maintain a case where the one had deceived for a man to a stain and to recover the reward you offered. - This was contended upon the ground that there was a promise to one but it has been decided by all the courts that 1 SR 110. Bac. Rep. Cases 421.

When you a man has got your money fraudulently you have a right to recover it back. And if the contract entire then it is affirmative, for the contract either can be carried as far as in the case of a man who took a pair of horses & the agreement was that he might return them after trying them & if he was to take & try on the spot, he did not return the money & refused to let you have your money

If a man is a Debtor
to his Estate & from one of your
Cst. you may bring this a Cst. Debt
thing, or if he has sold his Horse you
may bring Detinue &c. &c. Cst. for
the value if you like his bargain
for in this Cst. the Deft cant come
into Ct. & may be sued the same as
ante the Debt may Cst. Deft as
agent / 2 Ray 1217. Com 419. 83. W. P. 131. 4
SR 387. 4 Ic 687. / & recover the money

Money paid upon an illegal
consid: is not to be recov? back if both
are equally guilty / 1 SR 266. 5 SR 405 /
but if they are not equally guilty & are
9 SR 535, 1 Scott 218 / then the offended Party
is to recover back by the offender
as in case of usury. Bill Vendor has no title
& if Purch: knew
it is nominal, the consid: will be
/ Atk 206. 1 Scott 363, 5 SR 716. /
& the note is void & may be maintained
& if money
is paid under void agt. or an
innocent Indorsee, it becomes uncon-
/ 2 Bos & P 409, 416, 1 Str 665. 4 SR 482 /
scionable for Deft to retain it. It may be
recovd back by SR 269. 2 Burr 1005.

Queen of
this Kind, Subject a Debtor can be sued

ness: a man in N. H. B. devises the money to N. B. every year to N. H. B. Jr. on the main ... also a devise to N. H. B. Jr. on the ground of a contract made with him, — that two double lots in Sel. Apt. will die, — It has been contended that one can bring the suit for the money to B. — his remedy [illegible] against the estate. for B may not [illegible] this agency / But it is premises were case — but a case was decided in Louisiana Cas. 2. 536. / Dart. 3. 18. 3. P. Wms 35.

If one never covenants indefeasibly to convey, but only a right, or title to be conveyed with a qualification. as of land is sometimes called with the right and title. But for another purpose, as, to enforce the right against him, in such case he may be bound to convey the right granted in under Apt. as on the land, case of a grant to build a ship of the a bond made cond. on the performance. the land is then given to complete the performance.

Cause of a conveyance to pay money the [illegible] may pay it the covenantee back again in under Apt. — as in case of a grant

money attained by oppression

Pawn of Pilots Pawnee indorsed to him
Pawnee is entitled to paid in return
upon Pawnee's lien & thereon & is
indebted. - The Pawnee not turn to
the way - has immediately not
thereto, the commencement of the Pawnee's
end. give notice in the last course
for he there received the immediate Pilot-
ages and he not turned and has become Pilot
for a long time
And whenever
way cannot be held in good con-
science it may be varied in this
action of indebt. assist. as when advant-
age is taken of a mans situation in
all cases of maritime, Lewis Pawnee
Comyns 565. Dun 1954.

When a way is paid Pawnee
into the hands of an Agent & the
action may be brought the agent at any
time while it is in his hands. but
after he has paid it over & the Prin-
cipal the action is immediate against the Doug 695n
Pawnee a different thing in that case the act of the
agent is that of the master, & therefore
remb. the action might be brought
either Z Ray 1210. 4 Burr. 2224. All. R. 824.
Dun 2 639. Comyns 565. 1 Tid 10 Wm 4 Dun 1984.
Indeed after notice the obligation to pay over by Pilot
when after notice it is withheld is
seen a contin.
In Com. of Canada if
Pilots of Dean are appointed by obligs. of Pilots in pursuance of duty arises
Ground - pawnee the pawnee paid after - as may not be by mistake.

Defences to the act. of assumpsit.

The defendant

may plead

Coverture is a defence & must

only be set up but also to any other act. against

act of Limit.

So to any a defence & a defence

against contract must be stated but

it may be given in evid. under the

plea of non assumpt.

Bond of defend stated to was a mino

& if might be only the contract was for

necessary's & so an Infant cant demur to act.

Infancy is no plea in

case of contract unless it be cond.

as if sells to T.N. Bank note cont.

of paying & warrant T.N. goes into Scotl.

Statute of Lim. is not after 6 yrs.

Other words same are now

as 21 was during Min. may be time

has date upon the cont. of warranty

the cont. of paying was broken at the

time it was made

It is a defence to a

cont. that the person was insolvent

Bankruptcy is that act

of Parliament passed to relieve

persons from unfortunate

Insolvency. Bankrupt is said to have

surrendered his little

finger. Bankrupt is said. Money to be

received &c.

Suppose a condition precedent
condition not possible at time it was made
but it becomes impossible afterwards. The
condition is good. - as in case of a covenant to build
made cond: if A. goes to church - A dies
covenant is good notwithstanding

But subsequent cond added to
ante cedent cond: - if it becomes impossible
by the act of God or of the obligor the
condition becomes void. A. agrees to give
B.G. he is then sick, or B imprisoned
him, the condition is good & need not be
to B.G. - & the case and the rule of
reason are founded upon Coke
Litt 206.

It is said if a cond:
be impossible at the time of making it
the bond is good but the cond: void, this
is in case of a bond. Now this is in
opposition to the book alone - for a bond
is nothing more than a cont: & if the
cond: of the bond was not interwoven
with the bond, it is and would be
agreed at all Lands 1 Sal 177. - but
see 2 Ventr Rowe 72. - & this is
the rule now.

A cond: if it is unlawful is not
bind: - i.e. if the thing contained to be done is
unlawful or the cond: is so, the cond:
and be void, as delivering title & nothing

Bp Meath & al. vs Court & wife.

It makes no diff. whether the thing to be done was a matter of prohibition or malum in se & a Bp. is liable for doing any thing wh tends to attack of the Crim. as a wager with a minister of state that cant be appointed a bishop — & so a person to pay a mind for flogging a man —

All contr. wh have any fraudulent, dishonest, unlawful object in view are void. case of a wager to a man to be tied (alias puff) at an auction. to raise the value — no allegation could enforce the agreement.

Non solvit could be as light in writing as by word & the deft must be as above or money can be had upon it. (I demand it.)

Pl declares. to give 12 p.c. at for a loan of money & that is a suit upon it, it is ill on demr. But if it be in a tort money must be paid —

The only way to get a contr. of a tort is by introducing words of promise — it must be laid that was done upon such a consideration & no valid contr. it may be given in evid. under the gen. issue.

Wilmington Ch. Cases

Court to avoid on so of the many

can be found there can be no usury

Usury is

of 2 kinds or species all kinds of
evil. Statute does not avoid any
thing but it subjects the lender to penalty

Statute says that wherever a contract
shall be in its nature corrupt intent.
no usury can be [illegible] Bond
the contract contains in it no more
than lawful interest, but if lender
receives more - he then is subject to
penalty at the rate of any sum
so that when he lend it self to mention
it is void, but when usury is not?
When the more is subject usury to a
penalty, and in case of more than
lawful interest being taken reserved &
received then it is void, but is subject to penalty.
and case of a note of hand for £100 the
2 lend but 90. the 10 comes round &
he is to pay the interest, now as soon
as lender takes the £6 he is liable im-
mediately to the penalty.
Doug 243, 3 Wils 250. 2 Bl. R, 792. Cro. E. 20. 1 Saund
274. 2 Mod 309.

How has been much disputed as to
case of a premium lent given for money, & Doug 295.
to B. to procure £100. lender requires a pre-
mium of £6 - it is given B. procures
him £100. Qu. is that bond void. the

long lying on lawful interest. Now I conceive it makes no diff: whether the premium was 1/2 as above and laid the $600 upon y table & y: take $5. from it. There is no doubt but it is an usurious contract. Now this take y premium is not taken it as interest, but as all the interest arising of the year adds to y: loans money & take an oath y: for the money lent & lawful interest. & then take an oath y: he has received part. under the view that the retention of the part from the bad will serve him, but this is not to for the consideration that the several instruments which relates to are contr., are all but one instrument. So that in this case the usury and loan is money

The nature of interest & our Statute annual, so it has been much disputed whether accruing interest at the beginning of the year is usurious or not. - To know y: in truth is usurious. For the indictment not only the six dollars, as the interest. but also the interest upon the 6 ℔. - But the committee of it in this light long inconvenient, it is now done away & the Courts adopt it as an universal custom

Judgt. ordered that the Commr. do settle

[illegible] Court at your Sum, $100 & recind

but Smith let you have £70. Then is my old horse, wh. is worth £30 take Smith him for as much as you can get. — He old horse is worth, say, £10. — The contr. is usurious Doug 796.

Now no bargain is usurious if the agist is a bargain; but if the agist of the bargain is to cover a loan the transaction is usurious, Thus if you will pay down y money it shall be cheaper than if you pay in six months. y contr is good. — see. diffce between a bargain & a loan in sale &c. Catching bargains.

Jas. 1st case of Prin. & Interest are both hay. as in case of Attorney lends on a gent against client — 1 Atk 341.

There are some contrs. as contrs of Wagyard wh are for more than legal interest & are not usurious — But there contrs of Wagyard must be bona fide Trans. on a real hay. — but if it is not so but it is made as a cover to a loan it is usurious. — case of a loan paid by an annuity for life of lender, if he die before y grantee ant. borrower and lose nothing by pay, — so that it is a real hay. — Wagys cannot be usurious.

But when a man loaned a sum of money & he had a large family of children & the cond. was that in the course of so many years you all his children have paid the money and lent out. — the contr. was usurious for

part thereof was not recoverable, Moore 397. 5 B.P. 370. Cro J. 506. Cro E. 642, 741. Cro J. 253. 209. 507. Carth. 56. 6 Co. 59. 2 Burr 704. 1 Show. 8. Hardr. 518. 1 Vez 154. (3 Wils 391. 3 cases) 2 Ld. Raym.

Likewise

1 Atkyns 245. 246. Cro J. 509. Bonds with penalties are not usurious - as, "if he does not pay the money in such a day he shall pay double the amount" / tho' no further penalties nice to observe / these are not usurious - because (obliged) to pay if he please pay with the money when it is due & thus avoid the penalty - but if the parties did agree that the penalty should be incurred that is the money should not be paid at the time due - then it would be usurious - for this is the object of the contract.

If interest

so cast as to make it more than law; but in fact it is not usury. / Cro E. 501 Cro J. 647. 2 Vent 83 / Thence of Con. per cent is in most (if not all) the United States. & in most of the other States.

Any usurious

contract may be purged - as, an usurious note made by B. B. sells it to C. & calls upon A. the maker who gives him a new note; C. being ignorant of the usurious character of the note - the consideration given by A. to C. is good - tho when it was known, or might have avoided the note by usury

But if A had given B a new note it
would still have been usurious, but a note
to any one under the hand of his
representative is good

So when an usurious note
was given & the Drawer afterwards took
up the old note & gave a new one to
the first & honest debt. the usury was
held in Com. & to purged by age. of 6 y
Porter.

When A held two notes agst B one of which was
usurious, & B not being able to pay them on
demand made, embodied the two into one
& afterwards demanded payment on the
last note, B refused to pay it saying it was
usurious, & then instituted an act. on the good
note, & recd. it. Qu. Whether that can be done
while as soon as this good note was void, the other came out
pure.

It has been made
a question when a man became a surety
note by a contract was usurious. If
A gives an obligation to B. for a debt & B is
surety. A gives a bond to B. who finds
himself liable to be sued & pays off the
usurious
obligation & then sues B. on his counter bond
the question can be reason — for B might
have avoided the bond. — But it held that act.
and his personal has a right to give
a usurious bond. & pleaded & then note
a surety be sued & compelled to pay. that

The decision is
rendered by many
analogies, as the
bond given by an
infant if for necessaries
is void? — if for
luxuries & it is
not.

that he intended thereby to avoid it. Doug 791 n. Fol Co 28.

Non residence a mutual def. of cov. qua to R.g. Agree a Tenant P.R.T. absent — it lies for some time Annual Rent as mode in it R. Rent Penalty comes into ton. Penalty as to R.g. Bankrupt pleas not for widow, but contends that the tenant must rule — but it certainly is just that B. should recover — In the instt in Mg was good Plea and was the remedy — Should the Def. alleged & take up with an account part of the interest due in consequence of cov. to pay Rent the Instt is not complete & Plaint can the only instt not Leon give Mr Charlotte &c. The decisions in the Def. state have been Def. Mag. under the note to be good. —

Non residence a instt mode in a Place where it is required but to be performed in a Place where it is not required, as a covt mode in Eng where it must be 5 Pet. to be performed in Ireland where instead of 4 Pet. qua to the covt required? see Robinson & Bland, Rep. 107 x. / Inter L. Monaghan may it shd not be common, for it is ad legem & qua Cut et hoc note; But still there be solely two a mode, & render these instt good, as Magd & Westindia merch., no case strictly in point

Def. as to pay Rent mode where it was not required, but to be performed

, where it is customarious.- This State is not
to vote,- for the contr. ~~[illegible]~~ mode is on to look
to the Law when it is to be performed, as a Jour 10th.
upon goes into Ch. J. to make the contract
& set aside the Deeds is tan & 6 Pr. ct. Sales
of property

Thomas

To recover is always to be the sum for
which the land was given together with the
amount of interest ~~[illegible]~~ contr. was made

Chule Every can't depend upon a Contrs
institution of any county, and not a suit
lying but upon the a county where
there was no such practice existed about
there and to a recovery & a contr.
made in Germany and upon in this coun.
they recovery can't rod upon it.

It is an Error to this
rule that recovery is ~~[illegible]~~ thing is a
done was custom in se. and recovery
can be had. - If a man sold, contr. to sell his
wife & the Court think he might
it was custom in se. he could not
recover. For the above rule is that
a man in this state is entitled to re-
cover 6 Pr. ct. on a contr. made in N.J.

Thomas

a vast variety of cases in which State can have
recovery altho' unlawful or malum in
se, but because they are against some princ. of
policy, as in a contr. not to exercise ones

any one a portion known
ones trade, or not to injury. A remedy cannot
be had upon them.

Here contracts which are not binds
in consequence of their being against policy, can
not be enforced in Law more than in
Equity. But there are a class of cases which
in consequence of their being radically
corrupt, cannot be recovered on in Law the
Ch. will set them aside — Thus stands
matters for this diff.t Case of Canadian D.t
Conrad & void both in Law & Equity.

But as to
the third set of cases spoken of. The diff.t arises
from Ch having concurrent Jurisd.n & its full
effect whereas the Cts of Law attempted where
as is the case in various other branches of
the Law, as in the case of chancery drawn
bonds. or this reason the Ch. above called
all the judges of Eng together to get them to
Chancery, but they did not do it & the Act
act was made, empowering Cts of Law.

Marriage brokage bonds
are of the class of the above, which are bonds given
to secure a reward for procuring a match
— there are common in politics as often pro-
ducing unhappy couples. — Thus Ch. will
not aside these bonds Cts of Law will allow a
recovery.

D.o Bonds by young heirs who are
in expectancy of great possessions, & they when

persons being abroad by stopping the Law after it proceeds the order of time before they come in to foreclose will defeat them tends void. But Ch of Law will allow a recovery. Then an act sound Policy by reason of their Ignorance ought with means of pursuing their Remedy to be R. Cases 191. 2 Vern 346. 2 Ch Ca 34. 1 Ch Ca 54.

It is settled both in Ch of Law & of Equity that a contract to pay interest upon interest is not usurious, but still upon the ground that it was sound Policy, but therefore not equity will allow a recovery of more than simple interest. This contract is plainly not usurious, for the interest may be returned & loaned as it does not become part of the capital interest can be obtained but the Policy of it, is that men did know that their interest is payable at the end of the year that an Action brought after notice to the debtor that the interest is due, he shall not be benefited by it this is to protect the unwary who do not pay the money brought of their own.

And if the money after a certain time when the interest is accumulated comes it gives a bond for the whole Principal & interest both, & that bond being part interest interest is not usurious, provided the

it land is voluntarily given - But if the land was found upon the delivery, they threatening a suit then it would be unreasonable, - but the voluntary delivery gives it the / 4 Leon 206. / land a good chattel / 1 Wils 206. 2 Lloyd Anderson 121. 2 Bl. R. 861. Cow 112. 770. 793. 47. 5 Burr 2082. Ayl. 67. / Burl 67. Doug. 6th ency. Salk. 28n.

It is laid down (ante) that if an indeb. after a tort. & recovers the money paid on an execution with the accessory cannot be had. - How this question will depend upon the circumstances of the case. As in the case of Anderson & Allen & B for money, - who is going to make a great fortune before bankruptcy. B. don't mean it his practice to coin money, but when changing it comes in to him at 12 p'ct. - Mattland pays the note rogue - & then brings the action to recover the money - How the question will be on B's behalf the money coming honestly, - The debtor is a mere position regulation & does not affect the conscience

Want of consid'n is a good defence to an action upon a contract. Thou might the consid'n have been adequate - might have gone - but now the mind is presumed, tho the debt has become extinguished - for a thing

of minors &c &c. This is an executory contr.

Quæ of the contr. to sell - as 5 yrs is given, to enable D on an &c to go afterwards into the country &c, the gift is good as agt the donor - tho not agt creditors. This a good law.

And a consid. acquired in any contr. of any kind, whether it be by deed or in writing, But now if the written contr. acknowledge that there was a consid. now the contrary cant be proved by parol proof. - But in such case, tho presumed there was a consid. when it is acknowledged by writing & to this in the first place a good contr. void as to the rest of it by without consid. it is void as ag. creditors. If the contr. is written acknowledg. a consid. the contrary cant be proved by parol evidence tho it can by writing.

But now it is also under seal, how here no consid. can be admitted to show that it is without consid. Writs on the ground that the seal of the contr. implies a consid. now here still the quantum of consid. can be enquired into tho' the quest. as to any consid. at all not enquired into in case. - This a positive law. - Or a covt. of y. heirs, recovery must (i.e. to do a collateral act

must be prov. tho' damages may be but nominal.

But further Rs Cont. shews what the consid: was & it is all mere moonshine no money can be had at all. For the presumption of consid: arising from the seal? is rebutted by consid: expressed. & that amounts to nothing. - & that an act must fail unless but upon it

1 Term R. 369. 7 Co 46.

But such

for it is a bond to pay money & not a cont. & does want that

can the consid: mention of consid: here be enquired into? how if act on it you must rely upon a bond as a act of debt. & so the whole sum must be recovered or nothing at all - Nor in case of a bond the consid: being implied, a recovery of the whole must be had - & this constitutes a diff: between a bond & a cont:

Lufkose a

man makes a note to you & actions it note without saying anything about the consid: - it must can in declar: upon the note you may aver there was a consid: - as for a horse &c may be suppt by proof. for all the proof can be introduced to contradict a sealed instr. still it may be suppt any thing at all will suffice in this

Lutw. Law Rep. ch. consid: 1 Rep. 6 338.

Of defences wh. arise subsequent to the Contr.

The Ld Limitation is a defence, altho the Prin. wh. gave rise to this Ld there has been a vast deal of dishonest but I think it has at last been correctly settled by our own National Ct. It was by the decision of the Ct of Sessions and confirmed on Appeal.

Ld of Limn, made without reference to policy alone with little comment and to individual justice,

The Legislature

has enacted that where a contract settled within a limited time it shall not be competent to be coming into effect to an objection for want of such a claim is not made in such a time, it shall not be sustained.

Now if

if Ld allowed of no recovery upon claim not had a sum over 6 years. The case would be immediately at an end — but this is not the case for there are many cases in wh. the recovery may be had altho the Ld has run when it shou[ld] by objects to joint owners when subject to the Prin. wh. takes them out of the Ld.

(Mistakes may die, time to remain too long in note)

Salmond the policy is the foundation of Statutes for if Statutes were not such they may an unrighteous claim and the not ask after a length of time when all evid: wd might relate it is gone for= ever

The Statute has been adopted in almost every State in the U.S. Wills under all= Statute would not be good & not under seal not are not enforced within six year after right of act: accrued The U.S. St may a little from this.

The right of action does accrue when the man has become bound to pay.

Cases wh. are allowed to be without the St.

1. Case of Promise to pay a debt after a debt and of the St. - a action at Law lies a one cary. 2d The action is not upon the Promise but upon the orig: 3. The Promise need not be absolute but a cond: Promise is enough. as If you can prove I owe you & will pay it. he will recover if he can prove the debt. - Case of the Bell Bartt 471. Salk 425. 5 Mod 426.

4. Part Payment. does not require it to be in writing by St. but acts of the party a compliance with a Partial Payt after the expiration of the 6 years. - for the act has dispensed with only the Debt

5th Subsequent Mortgagee of Land

as a joint contr. None of the debtors go
making a partial
Paym. it after the Mortg. one — the Paym.
bars it and of the Land to both and
both are discharged.

6th An acknowledg. of a debt after the Lim. has run is nugat. now here is no Paym. to avoid Lim. bars and of the Land & the presumption that Debtor is an honest man. A Paym.
& Mortg. 1 Fed. R. P. 151.

Case. — A. owes B £20. after 6 yrs had run
upon it he is called upon & he says B
owes me £20 but I will never pay it.
Is you shall me. But he says I'll
pay you what I owe, — I will pay you £10
but no more — now the £10 may be
recovered — but if he had said I would
pay more & it more effect could be recov.

7th When a man dies in his will
gives "that all his debts" shall be paid.
Those on mortgaged Land must be
paid as well as all others. Bac Ab 865.6

8th Upon the same principle that an
Annuitant debtor who has taken benefit of
the Insolvent Act cannot discharge himself
from an annuity but he will pay all his debts more
barred by that Act must also be paid

Jul 29.3 P. Wms
94. Cowp 5.6.8
2 Show 121.6.

9th A Contingent debt was bound
by the St. Petersburg Act a commission
of Bankrupt, and after act of Petition & debts

debts made no objection to the debt
of Cant. Executor of the Ct. – Some but no end to cases
to be found in such case 5 Burr 2630.

Now all these cases
are well settled & the rule must
constantly refer to the 5th case is now settled
but the last case settled 4th term.

Now. The first point it
has been contended was in these cases
is that there is a presumption of pay.
in consequence of the length of time which
has elapsed. But this will not hold
in case there is no Ex. or
in case of the debtor having often been
called upon for pay. & had been and
has at this time – now in such case
the presumption will not hold –
But it has been said that since the time
which raises the presumption – Now it is said
that others will take more than the
amount will take the case out of the
Rule you will apply to some of the cases
but it will not to all

Now it is a maxim to make a will & order
all his debts to be paid – it cant come
within 4 years – now if the presumption
was that the debts are paid & Chancellor
did not order them to pay there would be
no Ex. of Law – for a debt shall never be
paid twice – So the Ch. Chancellor founds
a ground that there are existing debts

shou if the Test had drunk one Sentin
debt to a Lord & that debt had been
remitted by the Lt. this Sentiment might
have arisen - but it is not so

On the same ground it is that Xts Hearers
were to pay all the debts, must pay all, now
if the law presumes that their debts had
by Letter from the Proctr and not
done to pay them again - So that it
seems that their debts in Scare law
not been Paid. yet never presumed

2d. The 2d ground Luther
is. That if you can ascertain y Principal
& y debt exists, the law will raise
a promise to pay - - This argument will not
hold in all cases. For from y Pt of Ed
ward acknowledge that he owed y debt
but at y same time declared he would not
pay it - he said he alleged to pay it. he
that, I am not sure, as in the case with
B. owed y L & the debt & he said not pay
it. y all the L found owing, but he said
pay him 5. the answer was that a the
principle to recover y y L shall hold the
Head no action y y L shall be unjust
then he cannot. & he said he shall
ask for it.

The true principle of the case
are established by the Statute of Limi

a Pet. Debt. has not mind. the Ld. of Limitations

And destroyed cannot any of that language lies by at do. & this upon an examination of all the case will be found to be the true principle

(how often a man promises to pay or promises to pay a cond. of the debt being proved - or makes a partial pay. after pay. of the whole or after the time makes an acknowledg. of the debt, the time in all these cases runs Ld. - & so pay Loan the debtor made of it or to pay Mo'r did or to pay it

And so in the case of the will being made ordering the pay. of his debts. & also in the case of the petitioning cred. the debtor not objecting to the application for the commission, but waiving the Ld. by this acknowledg. that he and the petitioner for none but a cred. can sue this petition for a commission & issue.

An action not in a Pet. Ld. Con. on a bond under the Ld. of Limitations to prove that pay. had been made - the Plaintiff replied pay. & issue the Ld. Jury found for the Plaintiff but the case not being entered of Ld. Limitations J. directed

Oath as to mesne profits. Motion to enter Prom. nat. ascertain it. Motion to enter Verdict same time J. Pendall assent. Motion to enter as on the Verdict could be sustained, tho he cannot object to the Verdict being entered upon the new Prom. & give Judgt. on it and it to be said the instant may that the Land come defts. as to the first Issue because the Action must be try'd when the highest remedy.

Oath as to mesne profits was tried upon the Land. Verdict for Pl. Judgt. Ex. Ct divided Motion for Judgt. non obstante veredicto & the Ct. ordered Verdict be entered & upon the record that the first Issue was the one on which the cause was decided — This is the history of the Law now in force in this country. —

Ex Stat. cannot be given in evidence under the gen. issue, it must be pleaded in bar or not at all, 2 Ld M. 1494 & notes. Sal 278. 2 Ray 1539. 838. 2 Saund. 5 B.C.C. Law 110. Pleading 4 Dig. Limitations

The mode of Pleading & Ct is a matter of great consequence. It is a case which ought to be carefully attended to for the Purpose of getting Justice done by the Law of the Land. It ought never to be left to the Discretion of the Court or Jury. Upon the Motion for a new Trial the Court is to be governed by the Law of the Land. It is not to be left to the Discretion of the Court or Jury. Upon the Motion for a new Trial the Court is to be governed by the Law of the Land.

Upon the motion of the Plaintiff to enter Judgment as to the Land, the Court is to be governed by the Law of the Land. But the Land is Land in

in this State
in 17. years. Then suppose a bond, made
in N.J. dated upon 1st Jan. after the lapse
of 17. years of the bond with a mortgage
on all in it in this state. It is certainly an unjust thing that the
bond shd be lost, But if the Ct of Errors shd
declare the bond as could not be maintained, then by this provision of the constitution, the bond is entirely lost. —
In consequence of the principle of this
decision how can a suit in another state
from this in my opinion that it is not
good plea, in abatement
_____

Debt on a note of hand is not barred by
by a lapse of 17. years while in N.J. 6 years
bars it.

The whole amount of the plea of the
dept does not owe in Con. for it is averred to
say he does not owe in N.Y. & this plea of
the does not, at all go to the merits of the case
but if good merits must find the issue in Con.
in such case no to be as actual as a issue
in N.J. and it is the same thing as inserting the note. — Now if the plea of the D.
denied but a debt in actual existence in Con.
the duty done, & it cannot be true that
in whatever form the D. is sued, the Pltf
is still entitled that the action must be
governed by the law of the state in which

it—to Evt. exp. of Plea & Issue Plea in abatement—

And to all the precedts—That the writ must be Test in sight court. 2 Burr 1098.—
L9 com. Jurs. C. 1st ed 12 & 47—& when he acknowledged the debt but says he ought not
4 Mod. 105. Carth 471. Lal 425.— Cond. Brown-goat
5 Mod 426.— Case of Bill does not all the debt
to be paid Pr. Ch 426. 385-6.— Insol. debtors
Lal. 29. & Plea of any thing (in Suit of Eq.)
must be Fine Cro C 114. 160. 2 Wms 134. 2 Saund 63C
Lal 425. Petition for commission Sea
Cond. not to be returned Quantum
England 5. Burr. 2630. 2 L Ray 350, 420. 744. non-obstante
1101. 1 Bac. Ab. 385. Cro C 114. 381. 404. 2 Str 702. 6 ib.
190. Insol. debtors 3 P. Wms. 84. Lord 548. 2 Str
1214-6.

Resumed about the motion case 5th Coll
much litigated. How it is agreed that
if a man makes a Particular Bequest & a
residue, & he is obliged to sell Personal
for debts, whether a Specific Legatee it must
contribute all, & B & C as the debtors. How
the difficulty arises from the word being
joint, now if they are to be but as Balance
to many, the case and the equity decides, but
it seems must be but as all. Plea or Ans
no wt an Equity allowed to such other
Plea in Bowes 54. or 529. Holds that it is
no matter as to all.— Lord Talbot the
case was that A & B give a bond to C. D.

B after it had run thro a portion of Lot
No. was the land taken out of the Lot now
if the land is taken out as before, & should
it ever be recorded upon any principle
how does it stand? no picture that there
was implied promise on the part of A. to
pay his rent. - and the case in Day is ab.
found to a case in Pickins.
Fletcher's point of light in not the mode
was I attempted to be. That B. by the
main had made Barnes table to pay
the debt but not upon the land - for
as the land his portion B was also liable
but B's law implies a promise as B's
part to pay rent, being the air in the
promise is implied, on the consid.
of the old promise - & the consid. is suf-
ficient & is supported by the analogy of a single
person after full age to pay a land made
upon. Duc also supports my opinion
as in the case in Con. in Rule of where
a minor sells but on the land - after
words he arrives at age & comes upon
with the old one gives in writing &
the ground the rent was retained &
the two promises for as the rent
not be supported upon the land - How
is it in this case to be sent to re-
tained upon the land - but from
is a sufficient ground of an. & Thus from

consider. H. from point of view Doug 629. or. 634. 2 Vent. 151. 1 Part 191.

The implied promise is never barred by the St. for it constitutes only so. there remains effects a record from the partial pay.t

The rule is / Extended. after it is founded upon a contract of the Statute to it attention it does not. But in case of implied promise it is not does not extend to it & in these cases there is not exact ex. ded in the case of part.l pay.t — This rule is well enough when understood says J. Judge.

Effects of the St. of Limitations. —

In this St. there are certain provisions which extend to a greater construction as for Instance one of these provisions imprisoned Slave dispatch is dispatch Slave.

It does not run against disability is removed

If they are out of the county a legal year. St. Ld does not run. With regard to the Statute 3 & 4 Ann. c. 16 sec 19 of the Statute against the debtor or any of them or within the county the St does run

There is one Rule Law does not fall directly within the words of the St. but is made by Statute viz. When a man dies before his Exr. or Adm. is appointed the St of Limn. has run. St Statute allows one year before the suit is barred. 2 Saund 63 b. Bro C. 294. 2 Lev 245.

2 Saund & S. a. h. 425.

Lo too = can of a action lying for anything
but what was at the time of the writ issued
& judgt obtained & the judgt remains
in judgt lying obtained against. Nul tiel record
one copy of such judgt is obtained to this
action a certificate of the same is a bar.
after issuing

Q a bar.

Is found Q to Lim. it cannot be
taken out. There is no such thing
as bat is out

Tender! —

Under a common bar to any
action but not to ask. It is an offer to
pay a debt or to perform a duty. when
it is said.
it has binding the same effect in favor
of him tendering as if he had performed
the duty —

If the defendant pleaded tender
by the act of 1869 — If he can show that he
was always ready to tender & now brought
the it will have the same effect as if
the money was out of the county.

It is a defence to
all cases where the demand is certain & of
damages ascertained by law. Suing on $100
a 100 bushels of wheat. The damages are certain
a common note. $100 for building a house.

But when the damages are uncertain
it is no defence as in case of torts. & an
it can be a defence in mitigation
of damages.

It is true there are some cases in which certain damages
wh. the tender is no defence by L. but
a mutt. tender in the opinion of y tribunal
is necessy. or it will avail nothing. -
Your intention can be made certain
is certain in the consid. of Law. as for
the life of a man. "id certum est quod
certum reddi potest. is the maxim
Let it be a good defence at all events but of the
Notes of hand, or to pay money, or in
debt &c. But is no defence to torts. -

Duty of the man who makes a tender

It is necessy.
that when duff has once tendered the old
lay the money upon the duff may
sue. it if he will call.
But in case of collateral articles, the
tenderer may take the chance. If the is
then discharged of the debt, as if he should
give a horse alleg. to deliver an yoke of
oxen. if he tenders the oxen & leaves them the alleg.
is discharged. But it is said there is
not the case with money. It is how-
ever allowed on all hands that if he
has a lien upon the money it is a
discharge & in case of a mortg., how the
mortg. avails as he is alleg. to lay up
the money also is the money. This is
material for as tenderer is alleged to

In this case of collateral article given to one who is liable in damages

keep it if the money belongs to him. If he loses shd he lose it or not. whereas if Money is tendered he loses it not case. How I consider the tend: is not case but a bailee of tend: How if tend: is sued & pleads tender & pays into court the money, no dem and being made by Plff for the money, he throws the costs upon Plff. How this action is not a suit but only a demand. & Plff can have no interest for the money tendered. How all that tend: has to do is to keep the money as an honest bailee, has an honest bailee deliver it upon dem: & this being done Plff is nonsuit Remit being to note no money is had upon it.

So the tend: does not derive the same advantage from the tender that he does from Payt: but is placing in the exact bailee has an bailee for neglect. - This is good law - but not case at all. Decisions are founded on Davies reports. Case of a non tender. Eng Stlg: The shillings in this case were current by proclamation & pass: at the nominal value at the time tender was made Davis 69. 72 b 4. which in Ireland when tend: were worth but 19/ Davis 19. 29 / at the time of the action 1 Dyer 81, quere whose was the money, tend: to be the Plff. or the bailee alleged to take the premises no of shillings tendered.

Similar case was decided in this county where the money was lost by fire after tender & after action.

Contr.
of tender and there is nothing in Scripture
to the right stated down by y elementary authors that the debt & duty remain
notwithstanding the tender —.

If the collateral article after tender is kept
by y tenderer & that is afterwards demanded
of him he is alleged to detain it wh. increasing as if it was money — but in this case
he is not alleged to keep it

The demand
must be reasonably made v. after tender
or the demand will have no effect
in favour of Plff. The demand for the
money must be made at the defendant's
house or at a time after it can be
answered. Hence the defendt might be inconvenienced

A man has a duty to perform
by a contr. now by y will he is to acquire all the advantage by tender to him
as by y performance. Now in y case of a person,
there is some difficulty, as a person to
build a house, how if person will not
allow person to build — it, on the ground of justice, should entitle person to
every damages. If this is con practice
but the Ly will give him the same
remedy and gain a right to y performance

What amounts to a Tender?

An actual offer to produce & tender the money is not necessary to make a tender unless the party refused to take the tender if made / Cutts 20 & Lev 209. 2 Lt 104. / & it is not necessary to offer money after him at his word. / Sel N.P. 171-2

It is not necessary to count money at the counter, it is sufficient to say "it is ready for you, take it". but it must be in sight / 2 Roy 686 / and shown or an offer of the contents of the bag.

If a man owes a certain sum of money the right of the tenderer to apply the money to which of the contracts. But if he does not do it tenderer may apply it to which he chooses 4 Co 115. 2 Show 916.

A promise anything or a receipt has been given for anything that is certainly bad. Discussion whether an over payment was not bad.

The money tendered must be legal current by law. current money in the country is sufficient. 2 Bl. Rep 826. 3 Wm. 552. / Doug 62 / 115. 2 Wash. 282 / 1 Dall. 406. All / 5 Co 113-4. / Even a petition signed by a made or part of the thing bank bills, the tender will be good / Cy. Ca 248. 2 Str. 27. / Sel N.P. 173.

As to counterfeit money the tenderer the tenderee not known. that it is counterfeit if the tender is accepted & there is no remedy it is void than this is not analogous both are void but

is that Defendant has his remedy against
the amount of the bad money & this on
the ground of mistake
How Bond is that Defendant may pay
out that note is of no value - may
do nothing. he shall lose it. Bunb.
208. 5 Co 119. alias there is a remedy against him
in favour of him who gave good for bad.

Where is the Tender to be made?
If there
no place agreed upon between the
parties it must be made there. but when
there is no place agreed upon, it is to be
paid to the person of Defendant - but this
is to be taken with some qualification.
as if the man is gone from
home on the last day of forbearance
seeing at that time tender to any
person who is an agent of the Defendant
& this is sufficient - for he is not obliged to
tender unless the last day of forbearance.
If no agent is to be found, a tender before writing is good.
(If Defendant knows
and the mo-
ney must be
sent to him
if in Kentucky
then.)

Third no exception to the
note that it is uncertain. for debtor to
look into the Ord. - But there is a
case that makes it a little apparently
into Kind in Oxford summers Dict Londt
in to writes, the money become due when
he was in Oxf? If he may not have

in Lond: there to tender / 2 M Mon. 0 Ps
was made, he did hold to tender
30 £ d. But it was adjudged presume, upon the
former point: they made by debtor to pay on such a day - & Cred.
made no objection -

Another class of cases as to a return
ment. Thereof in Eng. is where the tent:
is obliged to go to premises there to
make the tender but is not obliged to
look up the land lord - the rule is
made for the benefit of the tenant
to prevent him being compelled to run
after Land all over the Kingdom
Reasonable notice to be given.

But with all
actual article a tender at the place
where the contr: is made is a good tender
It is a strong rule - But it is waived
by, if tend: point out another place
at the place it is not necessary
intended to deliver, then & at the place
where contr: was made - or: & allege
& deliver, here but in presumption of law
the place of contr: is the place for the
tender. Co Lit 210.

By stat. no tender can be
made after suit is brot: No 5 days of
the Ct & many may be brot: into Ct.
but in Ct, tender may be made any
time - & then is to cease & Ct & Plaintiff

in any of the Acts and made by the Gen C 2 54. Sel M 143.

As to the time's matter. Where a day is fixed "on or upon" a certain a day. How this is to be done. Many sometimes as to pay on that day - to perform time to tender - on the last day, - a tender made at any other day to his agents &c is not enough for he is not obliged to remain at home the whole time, but the parties and must wait upon & tender & made it with Plowd 176. Cro C 79. 11 Mod 121. Le good.

And the tender must be made on the utmost most convenient part of that day, for the man as upon knows not when he will come & need not to stand all day. The time allows to must count the beginning the counted, & to good to commence as to computing the days. This must be done by day light Cro C 14.

The arrangements it must be made within certain limited hours. as in the cases of offices 11 Mod 51. Stra 777 arising by one or certain hours

Let me the plaintiff not the time fixed

Buthe may tender at any reasonable time after & agreeable even on the next day if the meets Bud"

Where shall the tender be made? Ans
must con. the debtor must give
notice that he shall tender on such
day. — a tender then made will be
good. If find no case that will
allow of a tender in such case to
be made in the morning. but I am
of reason wh it should not be good case
Pow Litt. 211. 1 Dyer 354. 8 Co 98. pl. 1. does
not come within the reason of the former
rule

But if in such case the parties
did accidentally meet 5 Co 115. pl. the debtor
did tender it to the good Ld Ch.

Quere.
in Exy. as to Bonds. A Bond cannot be
assigned so as to give an action but in the
name of obl. but in case of a Bill or
note negotiable, & action is to be in name
of holder. Now in case of the lands.
The Ct protects the assignment, will
follow that in case of the Lord they protect
the tender of the money to obl. and legatee
for if the tender shall be alleged the Lord shall
plead it on oath. if alleged in a bill
But now & case is a bond for the selling
of certain article, as 10 tons of stone. now
A. contracts with B. who assigns to C. now
B. died in possession the A. might have
delivered the goods but C. dies. at the day on
or wh place it is not a covenant for A to deliver at

not Godson—
A. may take delivery of goods at the
Prop.
Sale then come into the hands of
B. & sold and come on the subject at
the elements from support this Jurisdiction;—

The consent of a tender Defend was at
Law a discharge of all Liabilities Prop.
to it not a entire discharge of the debt
1 Co 99. 2 Roll 518. Cro E 755. 1 Show 129. 2 Ch.
Ca 206. 1 Brownlow 75. Cro J. 45. 2 Saund
352. 2 Ray 964— But a plea of tender must
be made at a certain Place & day Cro
J 122. Dal 524. 1 Lil Ab 113.

It must be stated in the
Plea of tender not only that the tender
was made at the last day & at the
most Convenient place but also that
refused— the King Serjeant— it is not
necessary that the actual refusal
are averred. 1 Ld Ray 10. 2 Danv 109. But if the
Plaintiff 1 Lil Ab 623 now about the refusal need
not be alledged.

If he do not Consent you
over this Release & your remedy is
Damages & tender Cro E. 755
If the tender is of many moneys to be
done 1 Lil 32. 2 Show 143. pro That you always
run Ratio are ready.

This must must be done of collateral acts
etc. only the former part of agreement

Quære. A man engaged to do one of two things, as alleged: must (have to) / alleged does not choose but must be tendered as he chose / one not alleged: choice must be tendered

But if nothing said as to election / Doug 14. / the alleging tender not the choice.

Money cannot pay for the care of the land cannot be given in tender tho it may be given in charge — This is so settled in Eng.

A thing may be tender any time a night, instead of a bad agreement if Bald to seek a thing or meet a dog to and make him a case. now if B tender or part of that dog he would acquire a right to the case. Not to be compelled to make delivery 6 Bac 988. Cro J 146. 2 Ray 1538

When your defence is a tender it must state a tender on such a day but that it was at the day appointed and at the usual most frequented part of the day & that you have always been and ready to pay the debt — the defence is for consideration

But in the case of collateral matter a tender at the legal time, or that you was ready to tender it and was always ready — & then the tender discharges all obligation of it is after wards the creditor be long at the meeting & refuses

A bailee of under liability a sub-agent cannot demand - defendant must show over plaintiff's title upon the demand,

Where a bailee in fact to bring in contemplation of a certain description, in case of horses known as theirs, this is in the case of articles whose intrinsic value is nothing - mere portrait or family picture - in one case a portrait - Known not that the bailee obtained it recently - Bacon cases no other purpose than to be by Justice 6 Mod 228. 4 Bac 139. 7 Co 10. 2 Co 79. 1 Str 576. 599. 2 Ld Raym 374. This is a mere local custom.

(Accord & Satisfaction

An accord with satisfaction is a agreement whereby one party with some thing in lieu of the original contract. The satisfaction is the execution of this accord, the agreement to accept a thing in lieu of that which he held - this is the accord, the one when executed is a satisfaction. Now an agreement to do it, cannot be pursued notwithstanding that agreement is carried into effect it will not bar an action - the bailee may be made liable in some cases on a breach of promise - Where no tender can be made unless effectual the agreement itself must

must be carried into effect. Wagner's
case, it was decided by B. of
Exr. reversed Banks. B left it. H. ac.
was brot. by A. to recover this debt. The Judge
at the assizes could not be heard in bar.
Hil.

Record & Judgment
be heard in bar. but it is said it cannot
be heard in bar of a debt on such grounds Surety
by a Penalty — Debt for personal thing
alone — This the only case where
Plt is founded upon the notion, that
part proof cannot be introduced to
relief of Penalty — examine Deps
otherwise examine and by plea
— but now proof of pay.t may be intro-
duced Sworn by part — Where one
man with part proof will not be admit-
ted as well to plead a Penalty as a note
If the bond has a cond.n but the proviso
of the cond.n may be proved by part
Pin all these cases record & no exp.
it is agreed may be heard in bar. to
Hil. the exception extends only to the
cases in wch the allegat.n is made strictly
defendant upon the instrument as
there were & all Records cannot be
heard in bar — but the Pleas of the
case of Lindo & Thos 1 Brownlow 124

Cov C. 115. 9 Co 28. 5 Eliz 44 Cov J. 116. 1 Roll 286.

If there
are two deeds of one, & and the last
of the is a bar in favour of all the
mo. men shall have more of one estate.

I observed the and of variety of this only
to prevent cases. It does not affect
the rule — in consequence of the negative
of the concl. the Court requires that
all conveyances of land should be by deed
in case of a tender of & and a an
Action of attornment is awarded to
avoid & give the and — But probably
in such case the Ct would give relief by
compelling performance. 9 Co. 79 4 Eliz 1.

Qualities of a good record.

It is
true that a record or testimony
ought — that & and must be in full
satisfaction — from whence some young
Lawyers have taken a hint that a
deposition is good. But it is not true, the
Court it is, that depositions have & are
and is often be a good and, the
Clerk should not but if it does not
no affect it will not invalidate — nor
if the order that in writing of a note of
it was signed that B and another

a sum over. the Bill. Now not the
insolvency was the cause of the action?
it has told when the time of action
will be over
The Question is that the mortgage a consideration, & this will apply to all the
cases.

A entered into the house of B took the
title deeds &c. & then he was sued. & he
pleaded that, it was agreed by B
he would go out of the house
if B delivered up the deeds, it did
appear? in evidence? the award was a good
plea then was and consid: but if B said
if then had been any other cause to have
got rid and have been nuff: - if there was
material here small the consid: is
/Rep 65/ all to the first case, now if it had
been added if A would go out of house &
given him a sum of /Roll. Rep.
Mod 28. Str 446. it would have been nuff:

Butler said it must be
a consid: wh is met in legal contemplation
how if a consid: to be matter sum/ Cro
26/ for such for the consid: is actually
equity of redemption - this is an agreement
the not a legal consid: we make no such
distinction in Law.

Agreed to read a deed
Lords that it must in a Testamentary point
of view or the something, = how as for

It shd be agreed that if land by his London
or his Jones before certain gentlemen &
and be not Ryl / Rolle 125. / Clerke 2 Glos
& 909 and be not / Mod 128 / for the
latter is of some value tho the former is
not.

The cond must be certain, - It is
strange how much bargains or sales / that
what is to be found in the books could
not be made. as to delin concerted
& and entry a month or three days
in passing a house.

The cont must be
read as abovesd alone — Now a cont thus
read will be inavoiding, altho' tender
was made, — this case was held in the
exchequer / Rol 129. / anno 9 Geo 2 /
& held as laid down: Barn C 193. 315. / Mod 169.
Str 578.

The words of Lloyd's and and to be
known by is no averd: to him
& deft & if he did the D. it shd be and
in particular: Dyer waits a long time -
It is now thereby. That it was agreed the
deft ought to be bound because - it was
delivd in particular & no particulars?

If the and shd be lost by time after
the and was to be performed had and
the and could not be held in law -

was not exc?. It can as a clear one
that it has been made a question

It is
a defence in case of a contr. sometime, if
there has been no demand - where in
other case the demand must be made
and if stood after in 2 days. That the
contract was for cotton thread & that no
no demand, it and a bill in Eq?.

On this
subject the books are confused. I do not
dislike the principle but wish to
hear the case. How the only thing
to be known is, to know when you
did make the demand, & must can
you did allege it in Eq?. There is diff?. from
the gen? Demand in all case of indet. debt
but prefer the spec? Demand. & this must
in bond cases appear in the declaration.

As to Gen? Rule that mention is a demand
in any case when the person bound may
discharge himself by the act of a third person
& disagrees to pay till on demand - how
this is payable at any time, & then will
discharge himself at any time, But if the
person was to deliver over bond of wh.
it was given - such a demand is
necess?. - Then this case is must be
the other as far as the word demand -

effects it. Now then there is no necessity to state a actual Demand. If the Proctor of the case will grant it, all is right. But if a contract agrees to pay his share of the transporting. Now then no Lien can be made, as the contract is not bound until demand made
Suppose the contract is to build a house on demand. The Lien of the Labourer is of no effect. For the allegiance will not have his Lien in all probability - he must wait until demand.
And as the agreement may stay out of your blacksmiths shop.
And so in case of a due till they give to a man & chuck it to pay his man out of his store, the argument is that the man comes when he is a mind to. It chuck cannot interminate the alleged to work at his end.

In the case of Corporations, a demand must be made upon the Treasurer before it can be sued - Upon a debt was contracted Totally before he came in to office & is not alleged to know any thing about it.

Notice is to be given in some case the debt is owing until the notice is given &c. as for an allegation in the case where a demand is necessary. No debt

debt is made in the case of demand before demd made. But the case of note or bill &c. for the time to be allegd made the note to give but after the note is given, no demand is necessary but suit may be brot if the duty is not performed within a reasonable time, &c. Alges Bar under a gen. discharge of the debt. Confess & avoid it. Bar and rec. & entitlement for the consideration does not lie in the knowledge of pl. & this is the rule when it lies in knowledge and that debts not stated & given when it lies equally in knowledge of both. Action not brot &c.

Other cases proved on the ground of genl notoriety. case in Ld. C. J. Brown under an allegn to pay a sum of money, whether more &c. the money not to be paid, if whether more of Mr. Hale it was held for the def. sustained the allegn of genl notoriety. it lies more to be found. Robinson Dr. st. Legr. Dr. Robinson Gen. L. D. in st. / But Regal not as to the case in wh. there is a discharge in consideration demand need not be made in such cases.

Foreign Attachment

The custom of London rules in this subject. It is not a common rule case in a foreign county

or anothr State & he debts having no
visible fund to [illegible] but lemons on them
apt into ouer the abrondn. Their
power of foreign attach to draw this
money from the hands of ye abrondns
endorsr. When the power has been
served it is a complete defence agt the
claim of the endr into be abrondd.
Aond B 1000. The next ouer ye wrong
had not find any thing on wch to levy
but B owed A. How B. may sue out a
writ agt C. & the copy may be left with
ye house of the Cs attorney, & such
copy is to be left at ye house of B. upon
whom the end B intends to come. Just
in the same goes agt B & the writ of
the judgt of ye Ct. that adjudges B. & may
levy ouer the money. Then this power
of levying the Aloud G & in lieu of
a writ but any other by A.

By the law of [illegible] all money of ye State is
permitted to come in & defend it if he
can - in this case B is called the garn-
isher of A.

Thence governing here ouer diffs
in 2 diff states but of Prin. are these
for Md. the writ is, but for the good of
all the endr.

The mode of proceed is for
writ to be issued agt the Garnr. If upon

shd be recover.d. As this secures the debtor tho.' he may pay without the judgt if he pleases but it is at his own risk - a sci fa is then issued upon the judgt upon wch the money is to be paid.-

(a) The Garnishee or debtor or deft. in this case may be called upon to testify & he may testify in his own favour precisely as in a action of acct - for this is a species of acct - and if it be found that deft is not factor agent or trustee - this being supposed to be set as the ground of ye action - then he recovers his costs, if not he has to pay them,

This law is founded on policy to prevent honest credrs from loosing their debts,

This paymt by the D after the serving of the writ, is of no avail for the garnishee is that he shall pay it over again for the attacht secures the propty. But it is to be noticed that the pay must be a voluntary one - for if deft was compelled to pay it, he will be excused as where the D had sued him & the action was in the hands of the officer before the process was commenced by B. agst him, but was not served. This is decided as above - but it was contended on the case above that he on being served with the new process shd have sued out an audita

(a) On this sci fac. money is a debt on the sci fa [illegible] - [illegible] it has been secured [illegible] judgt [illegible] [illegible] the prop [illegible] a debt & [illegible] he may shew that it was a [illegible] & he may [illegible]

grenada. - this and. qu. might perhaps have been obtained but there is no reason to add to divisions & in the absence of this weighty consideration.

The Court sometimes made use of for the purpose of delay as a ground of the complaint to abate but here was a debt to be collected &c. Either case it is a question whether a foreign attachment against him. If the Court of one of his States to entitle pl. (C) to collect his money. Now if Jones this. at Pulaski has been made in this state then this suit of Pl against D. ought to be dismissed immediately.

Mayr. The defendant never be put in a worse situation under process, as Mayr when the judgment was in D. at one year the air for in this case was to commence upon the close of the year. This was settled in the State case. There was a case in point alleged to by D in error. A foreign attachment was laid in C. - in such case let him claim and the value as the Court of D. & Bond by his error. Then Pulaski then to the Court, & lastly & surety to the Court of debt - in support in elements are cast -

(a) custom of London. in Bac Ab.

a

The same
defence in case of damages - but only in
case of debt. as if Dower & or one of the D.
a bed &c. him the a. is not attachable
to f & bed shoes & horse. Tho' right of ac.
cannot be attached - It must be a debt.

The issue
the init. of foreign attach. were to delay
C to recover the judgt wh D may recover
agt him (A. the garnishee)

The officer take Attorney from C. Commission. but he was notified that it was
attached to answer D's debt. the writ of
f for attach. lay at f time of f & fi. fac
& off. The quest. remains, Does not f
lien of C follow the proc. into whoever
hands it goes. he having argued a
right to the proc. by the issuing of the fac.
ca. The case has not been decided, but
did think the proc. was taken by the off.
under this circumstance.

The law in this
case is, that he is not obliged to be a trustee
of A. -

Payment

other defence is
payment to the sheriff by garnish. or D's agent
to pay a debt due. Judgt. by default

(a) If effects & credits D's are in Ld's or D's hands attachable by foreign attachment to satisfy C's demand

Plea 5 not answered to a point
upon the subject. Payt may be proved
by part in writing under the seal of the party, & proof
of the value & consideration of the debt has been paid.

As to the performance of
a condition there is nothing more than to a
plea of performance
one as it was agreed to be done

Ex Absd.

performance if no matter of law can arise
upon the contt it must be tried
accordingly as it was agreed to be done
but if the quantity of two miles and
a half differ as a contract with B that
if he will do so and so he will enjoy
B.acre - now the single law of performance
is not sufficient for the law doth
admit a variance. If the plea is not
sufficient the law as well as if found
by verdict thereupon as if he declares
that he made the deed & the other
pleads that he did not make it and
there the question is if good during good
or bad & refers it to the jury, but often
the legal acquittance of performance
is found by verdict. Now the question
of law will go to it. 2 Roll Ab 43. 12 Mod
203. 408. 577. 1 Sal 124. 2 Ray 980.

That the merits of the cause have been tried before in a Diffr

That the merits of
the cause has been tried before in a Diffrent
in a former judgt in ejectment & verdict

How motion for a new
trial being then in case no verdict was ren-
dered, in this pt. he said, he the defr
knew, now here on a mo for that, & not for judgt.

How the rule is, that in the same
cause & to be made use of in the same cause
to motion in arrest of judgt. and
not made use of in the first case &c.

How & cases
of Brown & Dr. Brewer & Brewer the same
term before judgt in the one case & & case of
Brewer

But this case was diffrent from the ejectment
case, for was left known
it - & did not lie for there was no fine
in the bill. but here being tried it
was held to be necessary - for in
Brewer there was a demurrer - & cases
& rules goes to those diffrent things, with
judgt in pursuance does not case of those

How the Statute of Limitations case of this pt. & the
3 years have elapsed, but those acts not
bound by that time, How it has been
a question in case of this pt. & there is an

concurrent Debts, after 6 years have elapsed of their respective bonds, can the action of Trover be sustained? Break my head or cut off my leg? The intention of the Legislature appears to have been to bar all remedy in oblivion the cause of action after the lapse of the three years, — of course the object is most amply answered by suffering the action of Trover to be brought after a time, — The question whether the subject matter or the form of the action take the case out of the statute suppose an action of debt had been brought upon a bill after the lapse of 15 years. when an action on the case had been barred by the lapse of 6 years. Can it be the intention of the Legislature to bar the action on the case & leave the action of debt open?

Bankruptcy

(more a Lead)

In case of men being in failing circumstances it has been a common thing of late years for the bankrupt to come to a settlement with the debtors, on condition of receiving a certain discount upon the debt. it is most done reckoning with 2 or 3 years of all the creditors for it will be a ground upon which creditors do not agree to the compromise — as they always can a certain sum at the time than wait the event. The case mentioned to Ld

But Ch now enforces these against an compromise,

And in the case of in B.R. where a plea was rejected after the 3d Session the plea was furnished. The case was demd should one come to an agmt & then not & 2d. & each are sued and not a compromise - each the debtor gave their two note of 25 £ each — the two notes sd not recovered upon on the ground of plea agt the other ord. Rene. D.R. 437.

The same thing is now done in Law as in the case in S. Rep. See the cases avoided not in consequence of any plea agt each but on in consequence of the bond agt a 3d person. This compromise is a bar to a suit both upon the old & compromise

Exchange & Rebate.

We often speak of a discount & a rebate as synonymous. They are often used in legal language. But a discount is a remedy by plea of a right, & often times one is noted in and case in not a right of action. Ld Mansfield & Delivr 100 bush. of wheat, B.C., & the agreed to bargain & agreed with B. agreed & paid. Now Ld Mansfield cannot maintain an action upon the plea. - for there is no right of action, but of the time & delivery of the wheat had arrived upon the

Joint debtors — do not discharge for further a right of ac: discharge — Recovered — If the discharge is without a consideration not binding — but in the former case the right of ac: not known recovered then was nothing given — If it was a deed discharge was good Bro C 405. 4 / Ld 197. 293. 2 Mod 94. 1 Mod 205.

But a release will discharge this right of ac: Where any claim at a common law. This release is at least a waiving defalking the remedy: or it may be written a consideration the circumstance of release be inadequate for this reason implies a consideration.

There are certain words us'd to release every thing the most gen[l] of wh are "in release of all demands" or "in release of all claims"

If there be a grant &c Matter a release to debitum in presenti and operate as abrenunciation, but mere release Ro Lit 391. Cro J300 / 2 Sid.

Where Matter subsequent to deed poll subsequent thing cannot be discharged, for there is no debitum in praesenti as above — Ds Jct. Cases B. R. Eliz. Where by payment at the day the debt is not entitled — Where the debt depends upon the remainder in post.

Defr. at the end of the year. Now a sum
(of the same in present) paid for nothing
further & nothing upon which it can op-
erate there no debt till the end of the
year. Perhaps, J.C. may never have a claim
Bar Jo 68. an arrangement of D.M. long existed.

Must of the
debt extinguished during and not a claim
operate in such case?

Lev. vex. & Note is
given to pay for 1000 on int. discharge
is given some time afterwards before the
day of pay. Now the note is
discharged: but it is said the interest
is not discharged for it was not a debt then
in presenti. But it is now considered as
such on account of the principal
that is now ~~owed~~ discharged.

The case of
rent agt. Tho. Lee quoad J.C. found
for a year & before the year was out he
discharged ~~the~~ all claim to the day
before. Now this discharge discharges
a bond or note but it will not the
rent for this is attached to the land &
an incorporeal hereditament & ascends
to the heir at law instead of the Ex.
but if the rent had accrued & he
discharged by release, but that

was not due could not be discharged

The doctrine of merger does not obtain as largely much, tho' to some extent, for fee to all & chief rents alike, for fee to real property. Much more so to the heir instead of the Exor. Cro. E. 606. Cro J. 487. 1 Lid 141. 1 Sal 578.

Assumpsit.

Before a collateral a future time cannot be discharged by a release 8 Lid 294. But it will be discharged by a release of all covenants - but it will not be discharged by a release of all damages for it is not a debt in presenti.

See the rest of 9 Mtr over leaf. -

A higher Security is a Defence

A contract of a higher nature gives for one of a lower is not the lower contract is merged in the higher - to a defence against a suit upon the lower - But the defendant upon the part of the lower contract being merged in the higher. If this is not the case it is no bar. as if the bond is given to secure a note or an agreement to submit to an award. an action on the note or agreement will not be barred by the loss of the bond or higher security - It is no matter how many securities a man has for a debt. if they are collateral, in this case an action upon

Bow 129. B.M. 215 9. Cas 2154. 9 Rea 15 4. 2 E.
Rep 479. 1 Bow 213. Rac 9. 1 Bid 9.
an will for all as to when the a the
last wher they are mayed in the right
men to the as last then & the as to when
the Lone men to Comd Sir.

A release to
one of seval joint or joine Trustees
allegas. is a release to all, for no man
shall have a double reconveyance.
Now A & B fall upon C & give him a
flogging. A after to C. A after a bid
full sum pd to B. pin accy of put C give
him release, this bos an acc ag C.

As to the Mention
of Penelope, Now there an case in
wh the Ct will confirm the Removal
of the words of Penelope within no-
rower limits that the words Remain-
ing might import. As Lowes a Cond a
B. B sells int C & C Known to A. &
B Los Cond & int C & Los him comd. as B. Lands. A dies
with Issue & B & C. & sell dem and is mord in this
was said as sold of about 7 Cond.
Now here the Ct will turn Cond
Bargy to Pen & Issue as laid down
above, & that the Land was Limited
to Issue as Devisees

Cr. Vanard & Wood. Held
in this suit gave A Ba agency of Pr. B
also Pr. Bank, the Pr. of N. Pr. of B.
A proxy and by agency & D. & C Lan-
caster requests a discharge of D. Dyer &
in full of all demands up to & of course
includes all the debts - Further was
a clause in the mortgage that
where a agency had been held bad,
question was whether that would void
whole instrument, &c. Held limited
to the mutually formed intention
of the parties. 1 Barb 377. 392. 295. Carth
119. 4 Abbt 577. 2 Ld Ray 825. 836. 664. 2 Lev 237.

Bankruptcy Again

Discharge
under the Bankrupt act is a discharge
of all "debts due owing" 1 Pet 2 Pr.
2 Cr. Chy 703 Davis 97. 4 JR 94.

Cases in these
states in the decisions under the
insol. acts of the different states are known
in the other states. The first
decision on the question made
in Con. when determined that the
were binding - In N.Y. it was decided
that the judge in another state was
bar in another - And the U. States
the direct decision -

Under the head of Law in an
action for a satisfaction of a man's
expence & loss. Does account during the
Revolution in not a man but all the
Brit. L. DC 120. / contract 1106. / the
Brit. amount to 9 pr cent was first applied to pay
the debt, the man was a refugee and to pay the
acquired Brit. an act. was brot. to recover a debt due
before & suppose it of Eng. held good act. and the

Quere

Whether a man
in a contr. obtain'd a decree is void after
that he
stand bid for an Imprisonment the alle-
gation, that such a man
is in Gaol of imprisonment this
concerns such pleas as allig. the same
but it does not follow that an allig.
given a man in Gaol will be void
for standing in Prison, or allig. for a debt, said
& agreed that to an allig. for mine that was
due at the
The death determines it when he is
Executor, not of the
(a imprisonment.) but nothing else not
void a contr. as a thing done once done

If the same thing is done to a
child or servant it is void, but nothing
done to a friend.

There is no [illegible] for the state of the case - the parties not on terms with duffs - the judge goes further. He will amend it according to the motions and instructions 19.5 39. 10 Ves 369. from fear (4 Ves. 2 Ves.) 10 Ves 192. 264. 30 Ves. 299. - Where the case of surrogation to the court & there ten instruments. 11 Ves 2 R. 419.

Read.

Where there is a fraud in the execution of a contract the court will aid. as if a blind man thousand to this an allegation of 50. the court decree it to be & the intend a give on of 43 - it could

If the fraud is in the mind does a court of equity aid at law - but damages against

Edgeworth, in case of mistake parties will not interfere parties will not interfere in all small matters - thus by setting aside the contract that law gives a compensation in damages. therefore does not mean to be effectual in all cases. as in case of a horse to be given for another, when he is good for nothing &c

partial Injunction — Bow justices not alone by giving a compensation in damages for the same tho' he may be entitled to 5 0/0 — good for nothing & the Jury chosen now the only way of doing justice is to rescind the contract entirely

Ch in the case of Stanville and Wilson in the Cts of Law: Rune D.R. 433

Of Awards

An award is a writing by one or more persons containing a statement of facts,

An award is the decision of certain judges chosen by the parties themselves to be arbitrators

Real property is a subject on which an arbitrament may be held but it will not transfer the title, tho' it is necessary for the holder to transfer it by deed — but it is a subject which can be arbitrated about, & then the Court will compel the conveyance — The reason of this is that real property is not to be transferred till after the award & then the common law will compel to do

But with personal property the award vests the property in him in whose favour the award is made

Son in case of an appeal or bill or any
Jemoval &c. the award bars a subsequent
action at law for the same cause. Yet
in such case the arbitrators shall award
a sum to be paid by deft that money
may be recovered as damages or if
they shall award a collateral article as
they shall see it is necessary to settle in favour

The power of arbitrs is very extensive
as having all the power of a Ct of law
in some cases & in equity & law
& they have all the powers of a Ct of Ch
in equitable concerns.

They have a power
wh. Cts have not tho' it is seldom exercised, viz. that they may set the title of the
prop. arbitrated about in favour of
him in whose favour the award is made
Ct but make a decree that the conveyce
shall be made,

But in many of the States, Cts have been
more inclining to decree the
title, but it is seldom as it multiplies of penalty of
non performce is ineffectual

Arbrs Cts of law, have no power in any
way to receive testimony from witnesses
persons unless both parties agree to it
the powers of Ch are more extensive in this
respect, by obtaining to his assistance

Ejt. It does not destroy the title in the suit or defence —
But with arbitrators they may order the suit in their own way. Upon the parties themselves
Ch. Cobbett stand thus. When Ch of Law can give only damages what is investigated Ch will entertain a plenary suit for specific performance
But arbitrators in case of a partner subject can do more than order, by enjoining the suit ...
Ch will examine the parties; but they can examine neither in both contrary to each the parties, but their remedy is as above — & Ch of arbitrators further still

Whatever is provided for in the power of arbitrators they are bound by it as if they as Court to decide accordingly & Law or Equity they must so decide —

When the arbitration at an end, it shuts out and the party might claim, he might not use that if the man did not comply & the award he might resort to his original claim but the suit is now pending, and the award is considered as vesting a claim in the person who is benefited by the award

I said that Ch could not decree the title, neither can an award convey the title, but seems to me

me that by the aid of Ct. the award may be made effectual to the transfer of the title. And in this case the deed as to be executed, the attorney to carry this by the award & make a deed to B of the premises, & the arbitrators award that B shall transfer the deed to A. for the land in this, then the Arbitrators will deliver to B. deed & Ct. & he will have B's deed & then executed — There is no objection to this & will be a saving of the case. But a bill cannot be made to commence in future, in many of the States this unreasonable may be decided — But in such states must a convey by award will be good —

Or Ct. will on a bill for a specific performance of the award enforce the performance, or the strength of the bonds of submission to the award —

Arbitrators may award in the alternative, as A shall deliver up a horse by such a time or pay $100. This am not be done by Ct. This done in those cases in which the article, horse, is difficult to be had, it being in different hands.

Ct Land to Land, & patris & therein does not take away the power & use when it

the award &c. It does not merge the award — for the bond is not given as a discharge of a claim, tho the suit may be brot. upon the bond. And therefore since a in all cases of bonds being given for the performance of the award, the action need not be brot. upon the bond — tho a bond for the pay.t of a debt ascertained by award may be sued upon

There has been almost a complete revolution in the law of awards since the time of Eliz. so that all the old authorities are of little value But a bond to pay a sum of money by an award may be enforced by an action, tho the law as to a collateral act, the bond to abide the award was of no effect. Now a person has a right to bring an action on the award or bond whether there was a submission or not, for the very circumstance of their agreeing to be bound implied an award, which as action may now be maintained But the common method now is to give a bond to abide the award which is to be the same time a note of hand is given

Now in case of a bond to abide & perform the mutual promises of the Defendant in the award, to settle a dispute & arose from family portions

a Specific performance will be compelled
but not the collateral articles, an equivalent
will sometimes be awarded as suppose we
can get portraits there is no equivalent — —
But if A agrees to Build a house for B.
& the old order of things did not be good
But if the claim was some injury, they
do not award that A. and perform
some collateral act, But this rule is
now extended & if the parties do not
guard off it in their submission they
will be compelled to perform a collateral
act as it is avoided by the arbitrator
But this collateral act must be of some
value in point of law, either money
or money worth. and award that
A do down on his knees & beg pardon of
B was held to be a bad award but now
the specific & that to their cases for
for surely in this contract A & B mean
business, & this is now all a dead
letter. & what is a loss to A is a gain to
to B.

When this submission is [illegible]
the act under a power we see the law
of powers stands at three, when the
submission is made, they must all
be pursued & awarded — the Courts Courts
of Equity must [illegible] the parties submit
to the award of the majority of which, but in

in this case all cases be parents,

Of

late it has become a practice to make this submission to Arbitrament of the whole controversy & thereupon to make it a rule of Court, & this completes them & decides the award & then by reference to decide it as to costs. Now attachments will be issued against them, But this is only in aid of the submission, for the relief, that either party can get on the Arbitrament, or the bond or by an application to the Court for an attachment to be issued

The Ld of Chancellor introduced this custom, the example has been followed by every state in the union, Maine, But as the Lds do not allow costs to be taken on law?

In Boston, the award is entered as a verdict & execution may immediately issue upon it —

Ags & B are bondsmen for C. who has failed a dispute arises as to how much each are to pay the bonds joint, but it appears that B is bondsman for 2/3 of it, the Arbitrators divide the proportions, & upon this no bond of submission is given

At what time can one not be sworn, when the is submission of controversy has been given — If money was paid under the by a void act no remedy to retain, the

it was established that if there was a Promise
& a breach, an Act. cd be sustained upon the
award — but the held that a award ought
must be the decision of a matter referred
to them — that said Award is held to
mean a Promise to indemnify. for
the indemnification implies a Promise
Vid. on Award 7. T. 90. 2d Ray 216. 950. 1039. —
5 Mod. 35. 1 Salk 74.

An award is the decision of
men chosen by the parties to settle a contro-
versy.

Their powers are confined to the terms of
limitation when given, & therein they can
more strictly than Ct of Eq.

An award when
made & is valid it is a bar to an Act. for
the same cause as if y.d award that Defend
pay B £100. for which the £100 can be
recovered but the claim on the ground of
slanderis also void.

An award is a compli-
cate bar to all the Acts. with the results
of one set of cases. The award may be
made in y.e case but a bond must be
forfeited by a suit, The rule of case is
that when there is a bond, for a sum of
money or a covt. to pay money or a judge
has been obtained there if it. gen. is satisfied

whether the land be a deed & the award is the nothing is dec. it will not bar an act. on the land, that of the land will be forfeited, tho by the Eng rule it is no bar -

The reason of Eng. is this & this only. that it is a max. of the Eng law, that no contract can be dissolved except by an instr. of as high a nature as that which was a against the allegation, ex ligamine quo ligatur. Now an award is not as high a nature as a bond or judgt. indeed it is no higher than a fact agreement, - this is the Eng reason & this is the only reason for if there is something subject. on which the can debend. if not upon the land, the award will bar the act. on the land forever. & if a man gives a bond to pay rent, the fact that rent may be withheld to prove the payment of the rent, so an award will bar an act. on the bond,

Now almost every state in the Union has a statute which alters the law of Eng. with the deed has arisen out of the a bond, now this takes away the above governing principle in the country so far as it admits the fact that rent in opposition to a bond, & there never was any good reason in the Eng. law some

case the Jurisdiction all done away as in case of an Jury of 100 & a Land action penalty is 20£. If a case of Land of 2 or 3 hundred acres - now if the Land be worth 100 acres for

Jabez said that an award on a subject of real Estate was not effective, because the title could not be transferred except by the deed of the party, Now we ask why may not the deeds be made before the award is made, Because because a title is perfected cannot be made to commence in future, And therefore this mode is void, But in some of the States this provision is done away & where this is done, the above mode of transferring the title by means of an award & by the power of the Arbitrators will be good. ——

But on this subject, there is a great difference among the decisions of Law the judge said that a bond to abide an award respecting Real Estate was good at common law, Chief Justice Kent said the award was a good one & should stand the Court said as the former, the Judge may the award or void, Then another judge says, the award will be good & just the

good at common law

the Court provided the submission was by Deed — Else cannot be the effect of the award. It is now settled that such award will not oust the Court but the Court of submission is binding 1 Ld Ray 102. 115. Kid. 48. 8 Co. 40.

Things not Subjects of Awards.

There are certain things which cannot be arbitrable upon. as all Criminal matters, Matrimonial Causes as whether a Man & Wife can be divorced &c must be decided by Ecc. & Spiritual Courts

Whether a man is a gentleman Rottenness &c cannot be referred to Arbitrators, So tho' gen. whether a man was legitimate or illegitimate Boniface Knight

Arbitrators

have not power to issue Execution. No Man may vest a title to Lands, that is, the award is conclusive evidence of the debt being due; The award cannot be impeached by any enquiry into the antecedent causes of it. The Lands it may be given in evidence

But the Execution cannot be issued & Arbitrators still an Act may be brought upon the award or in case of a bond the penalty may be

be set upon it on the award at law
was not settled and the matter
that at this time only a moiety
must be sought. — For it is a rule
that when two matters are given
not for the same thing, but the one
as a security for the other, the
higher will not merge the lower
unless, as that case the act. may be
set upon the award merge the
bond

Arbitrators have power to award
alternative performance — & they may
do by adjudging award. that a man shall
do one thing or pay a certain
sum.

Proceedings upon a rule that
the act. shall be set upon the award
& pray a sum certain if there was
no bond

But of the usual method
of enforcing the award. — if parties
above to bring an act. on the award
2d to bring an act. on the cov. to abide
the award out of case 3d On the Cond
bond to abide the award this is the
usual one, 4th On a note of hand
given for the same purpose
5th Documents coming into
possession at the time of commencement

business. I suppose a good one than getting into your net through our Union Court of late and to the Co's Comm's, as they independent of it in short. The mode was to go before a Magistrate to complain judgt. & then go to the arbitrator & give the judgt. to them on the award, & the Magistrate then issued his exn. to recover the money upon the judgt. of him who is awarded agt.

Bob became at length aware in what form his own story leaves grossly absurd & the examination of the arbitrator, when then he was without any dog in it. I precluded him while an exn. was over his head from getting money off this examination, until a length of time had elapsed & the man had suffered very much, When the case I got out an auditor's writ & recovered in the recovery but it was very expensive & the decision above mentioned was the mode declaring this proceed. illegal

Of

The retrospective Act did not avoid, may be revoked, but in many cases the man who revoked perfect his bond by the revocation, but this no considered as, unjust

Awards. Submission unjust, So now it is decided that a recovery may be had agt him notwithstg the awards of the Referees entered into by submitting to arbitrators.

There are certain qualities belonging to every award - In case of a want of these the remedy is at law. - If the submission is by rule of Ct, the party is liable to attachment. If the award is void from extrinsic causes as corruption, or partiality of the Arbitrators, by the Eng. law appeal must be had to Chancy. In this State the remedy is in the Cts of law & so in many other States. -

When there is a submission to abide the decision of several men these men are called Arbitrators. If there is a submission to y^e decision of one man in case the Arbitrs disagree, this man is called an Umpire

Every thing not whimsical, stipulated to be done by the arbitrators, must be performed by them.

Submission may be made by the party or by another. How as an Infant is not bound by his contracts - Are the Sureties of the Infant bound? The Cts argued that the submission would be void, & therefore the Sureties wd be discharged. But the submission of the Infant is but voidable - The Surety is bound 8 Co 82.

Lovan & When the submission is in writing the revocation must be in writing & Cro Eliz. -

The effect of the revocation has in many States of the Union been considered as very dangerous - so far as that the whole bond was forfeited by it. It was contended on the one hand that the bonds ought not to be forfeited - so great were their amounts, while on the contra it was urged that, that the object of the bond was to guard agt the revocation wherefore &c &c. In Con & some other of the States they have agreed to chancer the bonds, but the question is still disputable. -

It is a question to ascertain what the plff is entitled to, in case of an revocation, on the one side it is contended, that he shd recover no more than legal costs, on the contra, - all that is equitable, & thus it was decided in Con. & I think correctly. Brown. 1 pt. 62 or 1. 2 pt 290.

If there is no revocation still the bond may be forfeited, as one of the parties does not appear, the arbitrators refuse to go on & the time of submission is out, Latch 207. 3 Lev 17, Cro Eliz. 918. -

Action of Debt.

Aug. Term 1811 was
continued to be a sum of money due on
by an express contract as by bond note
&c no matter whether by sealed obl.
or in writing so long as it was for
a sum certain by contr. But this
is now extended, as if there has been
a contr. Where is a standard by wh
the sum may be ascertained, it is same
as in taking up goods at a store. The
market price is the standard. Id certum
est, quod certum reddi potest. Cro El 192.
3 Co. Doug 6. 1 Wms Saund 350.

Originally when the debt
was a sum certain & there was no ex-
press contr., debt w'd not lie; now it
will not lie unless there is a contr.
for there is no indebitatus without
an agreem't. Would it be said that
obl. would lie in no case when
debt w'd not, but this is not true
for in case of money found debt will
not lie tho indeb. obl will, so in
case of an exchange — all the contr.
that is necessary to support debt is one
for the article, as in the case of goods
taken at a store,

Dod ac. mum the cause of action
promise, 3 Wils 65. 345. wager of law has done
it away; ask to join to get rid of the wager in
law —

Or an ac. of debt the defendant may
say that the noble men must know
if any thing more than your own
private matter of fact, that no power
vest. ch. to administer to know the top or
ground nor does the mind of mayor
& Aldermen 2 Bl. R. 1281. Doug. 6. 703. 1 H.R.
244. 550. - 1 Sy. 219. Oldham.

Owing to the same doctrine
the wager of law must vest. of debt upon a
grant contr. & to this ag. an Exec. ch.
for they do not swear themselves clear
wager in law not allowed on a statute

Debt lies for service rendered. — Thou sup-
pose the def. promise to pay the debt of
another, now there is no mg. on the pro-
suppose it is to be in writing, def. makes
only a collat. promise i.e. if A does not pay
debt I will;

Thou if B had attached all the goods
& then B says if you will give up your lien
I will pay the debt if A does not, thou
here B is liable Bac. E. 107. 10. 193. Cro. E. 193. but
not on debt

Thou if A promise B to pay for goods which

go to the use of C. & being the only debtor debt will lie agt him, But if C. goes into a store & takes goods. & says dont sue C & I will pay you. debt will not lie; for this is a promise to pay the debt of another, But in the other case where A says let C have the goods & I will pay you, debt lies for the debt is C's. & they 3 & 2 or 3 & 1.—

In the Mercantile world men often will not tie the 3d person is liable, as drawer a bill of Exchange on C. the bill is indorsed in favour of B. to A. who indorses to C. now neither A, B, or C is liable, but the drawer or Endorser (B.) cannot be subject to debt but the reverse is true in all other cases, but between D & E. there was a privity of contr: Debt will lie agt D. in consequence of this privity, how upon E had accepts. there no action of will lie agt him. Esp 170. 1 Sal 23.

It is said the drawer is liable in an action of debt & it is true but he is this liable to none but the drawee with whom he has a privity of contr.

Debt will lie for the penalty of a penal St. tho' there is not expressly any implied contract, & how with the aid of a little fiction they give the Lawyer

may then is a contt. on behalf of any man to keep all the laws & shoot himself will a Pay mark a penalty, for guilty is ten a good plea & Bl 46 ℔. the mil outlt is a good plea,

Debt never lies where damages may be recovered, ergo it will not lie on an Assumpsit for to do a collateral act, as build a house.

But whenever there damages have been reduced to a mere certain debt will lie as when they have been ascertained by a judgt.
But it has been said that debt will not lie on the judgt till the time for the taking out the writ has run. the quest. has been agitated in the U. S. Cts.—but not decided
It is allowed by a set of cases in the Eng. books as that this action is a remedy concurrent with the execution.— the judge observed that it was the duty of the debt in a judgt to pray writ the judgt without the writ being issued, if any he does it not, the is a fraud Ld Raym 923. Carth 30. 1 Ld 351. 2 Bac 362. Cro J 364. 6 Mod 288. 1 Roll 60. 2 Bl 69. 2 Bac 14.

Debt lies also where there is an award of arbitrators to pay a sum

sum certain,

But this doth not hold when the man is taken on Exn, Some have held that the imprisonment was an extinguishment of the debt, but this cannot be for if he die or run away the debt ceases, as to Ex or himself -

If a man is let out of Gaol by the creditor without taking any new security, it is said that the debt is discharged - How this all grew out of the law of escape for the escape is a wrong & a wilful escape is a discharge, - & this was established under the vigilant, & stern (as they are liable) but when this was known to the Creditor, but it is absurd when known to the Creditor for no wrong is done, but rather a good & it is unjust & hurts the debtor that he when he can walk & pay anything & will remain as long as he is kept shut up.

Now of these are two letters, a release of one is a release of both, but of one or both as imprisoned & one is let out of gaol, it is said this discharge amounts to a release of both the guarantee is now before the National

Bl 3 Burr 1466. 1 Bl. 557. 6 Mod 525. 7 Mod 420. 8 Mod 120. 3 Wils 15.

on common judgt will support an act
of debt, because it can never in this way be
called in question, Verdict can be quest
only on a writ of error, error. & there is
an important principle that a judgt can
never be attacked except on writ of error
or on grant of a new trial 2 Bac Ab. 7 Bac.
456. 3 Wils 345. 8 Co 142.

It has been much quest
in the US. whether a judgt of one state will
have the same effect in other another State
as it has in its own, i.e. that it has the
same conclusive credit in another State
it has in its own — The quest is one
of very great magnitude, as a foreign
judgt to an Eng. or French Key have not
this conclusive credit but it is only
prima facie evidence of a debt. How shd
the judgts of the dyff States of the Union
have but this am. or shall they be con-
conclusive, How does the connexion
between the dyff State is so strict that
I think the highest evidence shd be paid
to the decisions of the Cts of the several States
thereby keeping down the jealousy which
might otherwise be excited. The Govt and
be the case were there no provision in
our constitution, as to it, But the Constitution
I contend has settled it, & there are decisions
to the same effect in many N. England
courts of the States. Instead of C.L. judgts

only, not of judgt upon the bx loan.
Qu. as to debt in one state on an
judgt rendered in another, how enquiry
can be had into the original cause of
action? Doug 1. 2 W Bl 440.

It was formerly held
in Eng that debt did not lie on a foreign
judgt but one must be brot. This
is not law now, for it is prima
facie evidence of a debt, - but this
presumption may be rebutted. Eg.
shewing that such a judgt ought not
to have been rendered — I doubt the
policy of this rule.

What you said not when
the right consideration Doug 1. in debt on judgt.

Indeb. assit will
lie on a foreign judgt as Eng concur-
rent with debt 2 W Bl 440. Doug 45.

There
are some cases in wh the judgts may
be attacked, that is on the ground of
fraud & fraud only. If the fraud of an
authy vitiates the act & renders the case as
if it was not, or as if there was no contract
when in fact there was one, can of the person
enquiring the fraud & one with whom
one has a bargain made, & he then commits
of the taking was a theft, tho' assent to the
qua. was given as was the case — the fraud rendered
it a theft. & this is the nature of fraud
it vitiates contract & acts even where

know time out of existence; & the Com. Remainder of bond, wherever it is found to be taken a prop: it vitiates the prop. no matter in what way that bond is procured Cro J 514. 2 Mod 43. 3 Lev 346 Bl. R. 845. Stra 509. 993.

Debt is the only remedy for money due on bond or single bill. 2 Bac 13.

On a bond conditioned to perform a collateral act, debt will lie for the penal part, But you may go on to Chancy with it to enforce a specific performance Case) Give a bond for £100. & to convey on making a conveyce of Blackacre & B. debt will lie for the penalty of 100 £. or it may be taken as an agreement to convey. Yes such will be enforced in Equity.

So on a covt to pay a sum of money out taken as debt will lie, at the election of Covee (4 BR 124.) But if the covte is to do a collateral act, it may be enforced in Eq. But debt of course will not lie

But there are cases in wh you cannot sue in an act of debt, How it may appear to be the case from the instt, that Covr has the election either to pay £100, In instance a bond to Covee a house, Now this is not the like the covr case. - for gd

gen" the object of the cont" to have the
house built" now in the first case cont"
broken will not lie, but action only, for
there the object is not to enforce specific
performance of a cont" nor to build the
house, but is as a commutation for
the future building of house, & in such
case action will lie 2 Burr.

And lie
ag't an officer for money collected by him on
an execution, that ~~was to be~~ refunded when the
writ and cont" &c. stay over the money
2 Wms 14, Abb 206. 2 Atk 550.

Detinue

The action of detinue has now ceased to use because from these other actions in the nature every case in such detinue, but the action may still be used in many other cases

The object of it is to recover the specific article, & there may be cases in which this action would be necessary & answer the object of the pltff. as in the case of a family portrait being taken away. Now here damages as would be recovered in trover will not be equitable for the value is nominal, but it is said that this action will have no effect since 1833 a statute in Eng. for no action can be upon & take the specific article, this is true but the Ct will under judge that the 3 & 4 Wm 4 c. 42. now delivery of the article Ord. 961 or pay such a sum as being in the nature of a penalty may be such as will enforce the performance

This action will lie for any specific article, but not for $ & c. D. could get it in Eng. so that it can be identified.

But still it was a desperate remedy, in case of personal property of any other, for the idea was founded the tortious act divests the title of the right

rightful owner 3 Revis 687. 4 Bac 11
Le Merton in an act to recover the land &c
not know title to it.

Action of Account.

The act. Account is now very much used in particularly in those States where they have Cts of Ch. but in those States where they have no such Cts, this act. must be in vogue. but in those State it is not maintd by the State it is so used by

This act. is founded on some contract either express or implied.

at C.L. Bailiffs & Receivers, formerly this Guardians in Socage & Stewards & Bailiffs of Mans. was used chiefly but now the act. is always brought against Bailiffs &c.

The action

The act. has been extended by St. so that it will lie by one J.t tenant against his Coterminant in case of his having got into his poss.n more than his share of the profits

Stat. 4 Ed. 3. c. 7. & 2 Ed. 3. were not held in account but by St 13 now are 1 Rol. Ab. 15. Co. Lit. 172. 89, 1 Com. Dig. 85. - 88. because there was no privity of contract

There were actions by writ at the exchequer of the writs which relate to J.t tenant unknown to the Com. Law. But the other were by St of D 1st & 3d Edw. of your county -

If a merch.t under an Attorn abroad
to have an Account
or an Acc.t of account vide Lit. Le also between
partners it lies. The Acc.t is for to ag.t
his bailiff & servant, demanding his rec.
ouelle acc.t & to answer the damages.
The ground.s is this. If defft come into
Ct & admits that he has been a minor
or woman on a default, it is well but
and judg.t as to
damages is then rendered. But if he
denies it, the case goes to the jury, &
he being found to have been a minor,
a set of men who are called Auditors
are appointed & they examine every thing
the whole Acc.t is taken from the Books
& the Books themselves are called to
an examination upon the auditors, if
any thing is found to be due or in arrear
the auditors report & this report is in
the nature of a verdict, & on this judg.t
is rendered. Le that says in this Acc.t
is sui generis. You perceive that there
is always two judg.ts in this Acc.t. 1.st is good
compleat & the 2.d is what he is in arrear.
Every thing
that c.d be plead, by defft is that he
was not in arrear, must be tried in the
first place, before it goes to the auditors
before whom nothing can be proved
& when defft has fully accounted, how
long he comes plead he never was
accomptant for he has been one. And if he

he has a release from Deft. or has given
bond or has paid, how then the Plff
if fully accounted will not be allowed
for this is a matter in time, or he
has not fully accounted, but he is called to
account, & this he proves, & must
proved before the case goes to the
Auditors. — The rule is that if it is competent
for deft to plead anything before the Ct
& jury that shows he is not bound to
account as that he never was bailiff or rec.
for a release from Plff, has paid &c &c
But he cannot plead that he ought not
to account or nothing in arrear - i.e. that he has
settled the whole concern, or that he has
paid, for if there was no settlement and, this
all he can; The plea before the Ct & jury
must be that there is no ground or cause
to demand an account & all the matter must be
plead before the Auditors

Whatever cannot be
then plead before the Ct must not be plead to
the Auditors, & when he (Plff) comes before
the Auditors he cannot plead anything
contrary & what was not plead or shewn
before the Ct 1 Rolle Rep. Ch. 832. 1 Com. Dig.
91. 94. Cro. C. 230. 3 Mod. 115. 1 Saund. 67.

Deft.
may plead before the Auditors anything
shewing that he ought not to be charged
liable, as that the Plff is now barred by

by the danger of the sea, by fire, not by
by public enemies &c &c / Roll / 124 / as
well as any other loss / Com. Dig. Assts
E 9. for release from pers. / Lutw 680
Any reasonable description of the goods
will be good in the act., provided it does
not a factor &c who had said himself under
an allegation not to use the goods & sold
under certain circumstances; as selling
before the gds & the port cleared for - -
the Jurin: is that inevitable accident
excuses. - the Judgt in error can is
nothing in case. 2 Mod. 100.

The proceedings
in Ch. are governed by the same rules
of evid: give £100 & B to hold with Lenight Ewing acc
for the £100. Verdict acc. for the Ps. - & it is said, that
if money is rec. from D. by C. for B, give the
right to act. the question is if B can main-
tain the act. the contract either express or
implied was made with D. - It can be
true must depend, but I think it is
demonstrable by Chitty man that, B. may
maintain the act. / Com. D. 26. / Roll 120.

If a person receives goods merely as a bailee
(depositary) act. will not lie the owner or
debtor will, for he does not receive them
to employ.

On the same reason act. does
not

not lie ag[t] a ~~tenant~~ diseisor (only a
year) for the rents & profits during
his poss[n] 1 Com D 84. 88. 89. — Nor shall
he in that case for the rents & prof.
as there is the nature of an act[n] of
account. —
But he does it lie after a tortious taking.
As case of a minor being disseised, he may
bring disseisor either as his Guardian & the
being act[t] ag[t] him for the rents &c. or he
may bring him as a trespasser.
In the latter case the reason why an action
will not lie, is that there is no contract with
is the foundation of this action of account.

Private Wrongs.

Injuries may be to a man's person or reputation, or his property. There are some mixed injuries as they tend to a man's reputation as person & property.

1st Of Injuries to Reputation.

This is accomplished by three distinct injuries, the first is called Slander, the 2nd Libel, wh differs from the former in that it is in writing, & third Malicious Prosecution.

1st Slander. Now as to torts, I observe there is a diff. between them. If contr. unite contr. all the joint obligors must be sued jointly But as to torts wherever you have a joint cause of act. ag't another, you must usually bring me all together or only one or any number of them in case of slander one only can be sued at a time, mason Post.-
When there are two j't tort feasors & you sue one, the other is released by the recovery of a judgt ag't him in the judgt is a bar to an act. ag't another

There are two kinds of
Slander for wch an Act may be brot.
The first is called Actionalle in itself
for this cause the Damage go with
the natural tendency & the words to
do mischief & Damages may be
recovered wthout Damage to ensue
or not. & indeed it is not usual to
recover any Damage

The 2d is for words
wch are actionalle only on acct of some
special Damage & this special Dam-
age must be laid & proved.

Qu. What
are those words wch are actionalle
in themselves - 1st They are those
wch were they true wd subject the
man to punishmt. As an accusation
of theft, is actionable, the only question
here is whether the man is punishable
if the allegation is true.? & this must

2d When you charge a man with that wch
goes directly to destroy a man in his
business, gives a man a bad name. the
words are actionable in this case altho'
they wd not be so when alledged to another
as calling a Lawyer a knave, or calling
a Physician a Quack. for this in the
language of the law goes directly to

& any wh the words of a man living

3d Charging a man in his official capacity with that wh is detrimental to his character as an officer, as want of knowledge in a capacity in his office

4th Words spoken charging a man with a disease wh is infamous himself, as a charge of having the leprosy

All the words wh are actionable only on the ground of actual damage, they are any thing wh are detrimental to character, because actual damage not mentioned in the above four classes of cases & this actual damage must be laid in the declaration But it is to be observed that it is not matter how slanderous the words are; if they do not subject him to punishment nor to any actual damage no action will lie. A charge of adultery in Eng is not actionable, adultery is not a crime there.

So also to say a charge of any thing not subjecting a man to punishment, greater than a fine is always actionable but when it is not punishable with more than a fine the words are sometimes actionable & sometimes not.

I find nothing

(a) nothing more in the books than the mere
cases. But I think it is impossible that
if the charge w? subject of enquiry to a Jury
if it were true it also is injurious to his
character, in such case the charge is
actionable. Now there is a law of Con.
that if one throws anything into the
H. D. Harbour off the dock he is liable
to pay a charge of 5? for the
boat actionable (a) Why? we have a
Regulation that a theft false is
actionable with a fine. Now a
charge of petal? a pair of boots. is
actionable for wonder altho they are
not worth a dollar,, but see you
perceive the character of the man and
so at stakes

So untill I never
the charge must be false & it must
be malicious, no matter how malicious
may have been the words altho' they
can prove that true no recovery can
be had. Vast? If notice was worthy
no recovery can be had.

Malice is too
much left to mind by "Malicia"
thus by the Eng word. i.e. wickedly, with
a bad motive, with a spirit of ill will
a wantonly. Let a man without any ill
will purposely & false utter that he

(a) for the charge to be actionable, requires the character of the

Le does it wantonly Le ex. Calls Le Rd? Le more careful of his neighbours reputation.

Prima facie the charge is malicious in all cases, as "I stole Bs sheep" a proof of the words then is a proof of the malice & (of course vice versa, unless (as in Bs & mine Bordeaux) that the words were true, or that Le spoke them without malice

? Words actionable in themselves may be accompanied with other words that they were not supposed as a charge as calling a man a thief & adding &c. that he intended to cut wood upon the land of another, whence it appears that the charge amounts only to a trespass

Esso. Ja: 39. 574. Hob. 33 1.

So when a young man charged a lady with being a thief, & he then added that she had stolen his heart, the Ct upon mature deliberation held that this slight did not amt. to slang.

It is incorrectly laid down as a maxim that words uttered in the heat of passion amount not to slander now this is not so for true only that if he is grievously provoked, it will be a palliation, for the law excuses the infirmities of man. but it gives no quarter to his passion, —

In every act. of slander the character of Plff as to that fact is put in issue.

Now here is a distinction. If deft proves the charge true it is a justification; as if deft had said Plff had stolen a horse & proves it. But if he did only prove that Plff had the character of a thief it is no justification but it goes in mitigation of damages.

Now as Plff character is in issue; it has been a question whether he can shew that his character is perfectly fair. It is now settled that it can be done, & it will go to enhance the damages. Part of a County Court who said as Plff her character was of such a sterling cast that deft admitted in Pl attempted was therefore made the present for proving her character, for it wd greatly enhance the damages, such being the superior delicacy of her chastity —

Solvers above the want of malice stated the act. If deft then can shew that there was no malice, or that the charge was not as alledged no damages can be had. Can, said to the act. ag Lee former mistress for giving her a bad character utterly the contrary Plaint / Proof. / The Ct held that there was no malice but the mistress only did her duty ——

Slander 3

Def. Where one is charged to make in the course of legal proceedings & it turns out to be all false & even malicious, has an act for slander will not lie for Malicious Prosecution is will: see post.-

Def. Witness, in Pts of justice cannot be held for slander on the evidence they give in a Ct. - But the witness is liable for his perjury - Pts to a rule of policy to prevent its effect in Courts without power to give in the end. 4 B & Ald. 590.

It has been qu. ex. whether a man who reports a story ut he heard from another is liable for the slander. How to say that he is not liable is open a door for the admission of slander, as it is but to get some worthless fellow & tell the story & then def. may report it with impunity.
But it has been held that if def. will give up his author, he shall be sued but this is now altered 4 Ann 5 10. & it is held that def. must take either one of the neighbours reputation

Where by counsel in his argument with the omission alleged def. is not actionable - for it is saying no more than the

the said allows him to say in defending his client,

Whatever language the man uses in by a slander
[illegible] he does not make a direct charge
[illegible] may always that he made a direct
charge & proof of the facts will
support the declr. Palm 6 E.

Lord Bacon in
a quarrel, one said he spoke as cruel words
of him as [illegible] Lord 6 yr / So you may do
that but I don't, as I don't know how
to counterfeit. - words actionable

There are two cases two cases in the
books, which are very much upon the
same words but the decisions were diff.
in consequence of the diff. of circumstance
1st It was in Parl. & said for he was but
Lord Grey & the [illegible] for that he was a mile lie
after Mile 300. / [illegible] was but this for that he
drinks", words actionable, for he had not been in gaol.

A charge may be laid by way of question
12 Co 134. As, have you heard that Lm abot J.S. horse?

So when by way of conjecture, As, "If Lord
says, I said my it was [illegible] to steal
Whites horse" 1 Vent 159.

So by way of [illegible]
of do you know old [illegible] he told me he
heard a bird sing that Barbara White

Anne 1 Roll 64. 1 Law 272

So by antithesis — — So Simon Stut
Dam I also what Rubbs Co. 1 R. Law 150/
I Swan 306 Stubbs — a Chose agst
Gen. 1 Vent 295

I here remark that words
or tone or turn of mind
wh. only go to show intention, are
not actionable. This on the ground
that it regards the character of the mind
Bardeth 4. 1 Bl. "That is a Knavish fellow".
But if the charge was that "he is a thieving rogue" slander will lie, for this
implies the fact of the larceny.
see 1 Ld Raym 54. 1 Roll Ab 51.

Now
as upon A says to B. "one of your brothers
has been guilty of forgery". Now if the tenor
of the conversation will allow it, B.
may bring the action, but if unaccompanied is vague.

Obj. A says "B, either
you or C or D has been guilty of forgery
Now here all the bystanders know who
is supposed to, but there is a difficulty in
nothing but a charge — circumstances must
be relied upon.

I observed above the character
did not come into consideration in all cases of
Infamous crimes
cases. Now a charge of treason may not affect
a mans character 1 Ld Raym 652. for if he
was pardoned he will be a glorious revolutionist

the [illegible] he will be charged. But a charge of treason to murder in all cases

The term Murder has sometimes been used in a sense different from its legal signification, and,

It has been a great question whether a charge of murder can be actionable when it turns out that the person alleged to have been murdered is still alive — now it is said not if the man has not been adjudged.

Case. Boy was ill treated by his master. The boy became missing, the neighbourhood was alarmed, but he could not be found. One man charged the Master with having murdered him &c. — one of Hawker was he maintained the boy was afterwards found alive — he had run away. Now it is said that never nothing because he never was killed as the boy was never murdered — but perhaps on the charge of Murder a Jury might have been gone through with doubting it. — I pray God with him,

Perjury, is an oath falsely in a Court of justice, Now a charge of perjury with a description of the offence which will not come within this definition, is not actionable, as "a man does not touch the oath of office," But if the charge is of "perjury" simply

the words are actionable, and of any thing which implies such a charge. —

It has been held in this case of Cato that words spoken before arbitrators in Surgery — & for the same reason — But if the arbitrators have not power to examine — it will not be Surgery. B. R. East. T. Roy.

On the right of Hunt in following case. 4 Co. 14. 3 Lev 156. 1 Roll 39. 69. 70. 4 Co. 15. 16. Cro C. 258. Cro. J. 158

As to Forgery, observations are here to be made except if the charge such is made to qualified by subsequent observations the words are not actionable. Cro, 1 Roll 65. / as if a man wrote a note over, the name of another on a paper was found, as in the case. It was not forgery as the writer of it did not claim the money or present the note but told the facts concerning it. This is not forgery for it is an essential ingredient of forgery that it is done with the view of defrauding justice. So a charge of forgery of the above kind is not slander for the crime is not punishable; Ag.st a man gave a note as he supposed for 100 shillings by mistake the note was either 100 £ the holder altered it to 1 shilling. He was afterwards sued for forgery but the Ct. not even asked for it was not done for to prevent equity & justice but the contra.

A charge of forgery generally in all cases actionable for the presumption is that the word has used in its true meaning -
Star 142. Cro J 114.

A man is charged of what cannot be written see Cro J 69. 6th Hob 231. - This also relates to a case where of a man being charged of stealing them from another, not any body & a thief.

If from the words them out not so as to convey an accusation and does not amount to felony they are not actionable 2 Lev 51.

A man was charged with being a great thief pocket. Upon motion - the Action was / Vent 213 / for many / La Ray 959. / That action alle for the comment circumstances show that no crime was alledged.

A charge of witchcraft is not actionable, for it is not a crime.

By the Eng Law adultery is not a crime but it is punishable by the customs of London Manchester &c in the City for the accusation

If a man is charged of committing a crime of wh the law has declared, slander is not to be shown the unchaste character of the person on the ground that a man was not guilty, for men of ground it will be assumed

for it by the cause & then judge over the head of the jurisdiction. If after this is the case of slander for those words some the fact must be tried by the record, the rule must be the case Hob 81. Sho 264

How if the def[t] pleads a pardon & grants a pardon on the ground of innocence. & the effect of the pardon was to render him as one how to the case of the words.

How suppose words not actionable are found in a count[d] with those wh are actionable & the trial proceeds. - A verdict found for P[l]ff. Case, charge call[d] P[l]ff a liar & a thief, how it is said that judg cannot be arrested upon a plea of not guilty the proceed[s] ought to be stayed, & to the lying words, & to the slanderous words & this supersedeas the allegation. the Ct. then will proceed upon them respectively

Charge call[d] P[l]ff a liar now & thief, how it is said that the jury under the direction of the Ct. may bring in their verdict without regard to allegations, & the damages are assessed only on the actionable words. - But it is proper to prove the other words as evidence of malice

How the case of the case Holt

But if the words not actionable & in one

one count & those not are actionable one in another, the judgt will be arrested. There is no certain ground for this distinction, for the declaring quia dixit him a knave, or call him villain, all legal questions. All questions of malice only in the latter allowed/ 6 Co 19/ & there any thing not actionable/ Hobt 34 Sir. 66, 71/ It is because the words show the malice/ Lev 15. Cro J 622. Yelv 162. Cro E 208.

Words actionable in themselves may be proved on the trial to be used in the sense laid in the decl.n as at the time of the words laid in the decl.n he assaulted A & another crime. Now the meaning of this being allowed to be proved the transition of mind with wh A left B with the words laid in the decl.n. - The case is a difficult one but it is well established & it seems to be reasonable. - The damages however are given for that wh is not laid in the decl.n

The 2d class of words actionable in themselves are those wh are spoken of an officer, as of a Judge Justice of the Peace &c. Now it is necessary the words should be spoken of the officer executing his office,

It has been said that if the words were only in derogation of a office sustained, they were not actionable, but only

obj when they acquired his land. [illegible]
Com v Rhodes 1 Roll 54. 1 Lev 260. Cro.
E. 223. Cro J. 246. 8 Mod 270. 2d Roj 1358. –
1 Salk 695 note the distinction.
Thus it is as to Doun G L Hardwicke & charge of
a man with inability to mix public
inconsistent with his office, & actionable
But is not material whether the office
be one of profit trust or honour. As to say
in a colloquium relating to a Justice of a
Peace, they he is a jeth &c of a Justice of
a Peace is actionable,

A charge of corruption in a man in office is
not to be actionable unless the action of a
man in office – in colloquium relating
his office, this in Salkeld is said of an office of
honour. But I say that a charge of an office
of profit alone of want of ability, is not
actionable, the man is not a man can-
mend his ability

The objection again
was to be disgraceful to a man in his profes-
sion; in wh case the words are actionable
in Lawyer they would not be so when applied to
a man of a different profession, As Merchy of a
Lawyer I shall never employ / 1 Lev 84. 3 Mod
59. / the fellow insists to counter the case
Li / Cro E 569 / 1 Lev 297 / has been thus ruled in
Devon but the Court not be neither 100 Lords of Ass.

Cro. Jac 22 S. 1 Lev 115. Cro. Car 385. 1 Roll 54 62.
La Ray 1414.

Exchange a Conveyance with Covenant
Seisin - Sole Seisin, a Lease & Entry
& action ale for it 2 Lev 113.
Exchange Deeds with Covenant to
warrant the Land. 2 Lev 113.

Exchange of Lands with Covenant to
stand seised to uses Cro Car 253. 2 Lev 113.

In case of Words actionable, the Court
must take the words as they are spoken,
& the Innuendo is the surest Guide
& Rule of Construction & Judge

In Slander the Words
must be such the words charge a man with an
infectious disease; Now here the charge
must be in the present time Cro Car 430. 1 Roll 43. for if it be a charge of what he
has been, & may still be now good contrary.
Cro 473. 475.-
Such Words cannot be joined in the same
Action of Slander, for the words of one man cannot
be made the words of another.

BB. 1688. When the words are actionable only on
the ground of Special Damage, that Damage must
be laid in the Declaration, or else will be no recovery -

It is aimed above that the Def. may prove other words than those laid in the act. of this for the purpose of proving the malice (how it is said def. may also prove other words true, but the Question for proving the words true does not remove the presumption of malice; for a true story as well as a false one may be maliciously reported, — But that those words may be proved true see

Of the Declaration

The usual form of the state in the decl. is pro. &c. to be a man of fair character; but this is not essential — for every man is considered as having a good character till the contrary appear but perhaps averment has under it is now a matter of allegation

Cyclo 159. If the charge be in a former office of the def., he being in office the plaintiff may state his being in office, what office it is, & the colloquium may concern the office (Co. E282.) otherwise &c. will not lie.

The usual form of words were "falsely maliciously &c." but a decl. has been holden good the omitting the word "malicious" not the rest — the ground upon which the Court was to allegat. & proof of words were "false" in that

implied malice, it will suffice to say that the declaration and the proof support the charge — how it is necessary that the falsity and malice, or the want malice should appear by the construction or form must be law
2 Com D. 195.

This question has been litigated a good deal, & in Eng the principle was settled 2/4 Ba 512 1 Keb. 493. B.N.P. 8. Day Cas 576.) on these cases but I judge so as that upon proof of all the facts are all alleged it were the promise, still the promise must be alleged so that he means that from analogy, the statement of the words of slander without alleging the slander or malicious the action cannot be maintained, how as to the proof nature & necessity of proving the promise when the facts alleged justify it are alleged, the Supr Court is not agreed on & Ch. but there, how are these cases decided in any position, we are of these cases in Ed Rep.

It must be stated on the have heard
spoken in
the hearing of such a person." The word hearing
need not be used if it appears to have
been in the "presence" of such a person.
This must be viewed both "hearing & presence"
being to prove the matter that is not necessary
for all the cases in wh it is stated that "hearing" need
not be used the word
after verdict.

The words must be alledged to have been spoken of the [illegible] on which the condemnation was made [illegible] or in the conversation which was "you are a thief" - alledged by innuendo. (Cro Eliz 872)

Damages alone the rule when the action depends upon the actual damage the dam. must be alledged, & upon the plaintiff, case, a woman alledged that he had thereby lost "her marriage" the action alledged "her marriage with such a man" 2 Johns 118. Cro Jac. 499

The innuendo does not enlarge the decl. but is only explanatory as a direction, as saying a barn was full of hay, how does it appear that he had spoken a barn (meaning a barn full of hay) 6 Mod 181. 1 Roll Ab. 82. Sty 666. it must be alledged in the decl. as any part of the words & other matter are used by way of description, as your brother, landlord, & other description must be alledged in the decl. as any part of the words but if the words are but a portion they need not be alledged as "that Cook hath stole sheets."

Agreed

as to rule, That if the words were also applied to any other fact than that charged, the averment must be made that such application was made otherwise, Bl 5 as you are a thief as any in Eng. How then must he aver that there were thieves in Eng.

Eno E443. Eno E416. 1 Roll 84.

The wrong to be null & void a great wrong

It is true

of the question in such case; & so it was
& plead by way of defence for the commission
given under the great seal; some
of the State however have made it legal to
give the testimony under the general issue
but all these statutes have occasioned inconvenience, & the State of Ala made a
rule that defendant must give notice if he
intends to give a justification in evidence

It has

been a great question in the books whether the
matter of defence might not be given under
the general issue; a law of justification, now
here two words of fact & words for the
accused & defendant have always been
to show circumstances but the malice is implied
& defendant must show the words
true to show all the circumstances
The general issue in trespass by the law of
of late years that the words are not to be found
but some of our state papers. Doug 515. 1 Dall
516 5. Tha 120. Doug 426. B.N.P. 19. Salk 199. 1 Ld Raym
Defendant avers in his plea that he was acting by virtue
of Govt no Prog. 1 John. 46. Malice may be proved
for the purpose of shewing the malice 1 Ld Raym 480. Eno
E486. Eno E39. Eno E199. Vast to show the circumstances
or circumstances,

It is said that in case of a charge of murder being made on him, it must be stated that the person is dead, — this is upon the ground that the action was not maintainable unless the person was dead, & if & action will lie when the person is not dead, then a fortiori it must lie.

Lord Ellenborough Lander is not cruine, but it is also made by some of the State case & case in Comm.

The grounds of giving vindictive damages is to restrain the savage tyrannical passions of men. for this is the only punishment, but the principle is not confined to this case of a battery, how far if Pl. has beaten a man Def may recover damages of Pl. how far the argument may be used that great damages ought to be given to restrain the Pl. from his future injury but this is wrong. Pl is liable both public for a breach of the peace as much as Def for private damage — not so with slander.

Mr Lens allegation of Def that he has lost his friends in consequence of the slander is immaterial, for it cannot be proved, but if it alledges as a special damage the loss of a particular person it will be good. —

The Jury of inquiry admits all the words of course the malice how these words may be proved for the

It contains words that a man is known by the company that he chooseth is a common good one. — The circumstances the damages as it shews the malice, or mitigate them when proved by Deft Gen^ls of Plaint^ff circumst^s Evi C 139. Of the charge was of lying a thief you may prove any parties Reputation but of a charge of parties that Reputation must be proved. —

Libell.

This is a crime as well as a civil injury, & may be both punished by the Public & is also punished in damages to the individual.

It is a slander that is written or painting, & every thing that at C & L is slander, when put into writing is a libel & even more so for many things not spoken often are not actionable as libels when written; The principle is to be found in 2 Wils. 403. / the precise division of Lib. & Slan. was then held that any thing put down to render a man ridiculous, or to make him lose his friends is actionable / 5 Mod 165. Ld. Raym 416. 2 Str. 825. / So that no inquiry is here made whether the words are actionable in themselves / 2 Lutw 1568.

Any thing whereby one may be found in a libel, but words in case of slander, — for crim. Con. see March 1946. / but I do not here intend to discuss it as a crime

Def^t may prove the truth in defence. The civil
action for libel does not dispute, But
can he prove the truth under a Public
prosecution?

How the truth is that the truth can be
proved only in cases of civil action, But
under the process for taken upon the ground
of the action is that Def^t has disturbed
the publick peace, how can the truth of the
publication tend to disturb the peace
there the falsehood is not at all, for a
man is as much irritated by the truth as by
what is false when he is told of his faults
challenge him to say it was false; The truth
therefore ought not be proved, in a publick prosecution
and with regard to public prosecution for libelling
the Govern^t of Ind and case in the books we rule
not allow the truth to be proved, but there
in such the peace was disturbed; it may then
execute public measures. If Def^t for it he
may give the truth in evidence but still
he is criminal in the manner of treating
the subject, or by charging the Govern^t with
corruption &c, Else all the truth cannot
be proved ——

The ground on which Def^t moves is Def^t from
that on which Pub^t moves the power for a private
injury the latter is for the breach of the peace

Libel may be maintained agt. Def. or more privately, but as in case of slander.

Dec 2 Johns 479.

The principles not governing in cases of libel.

Judge Kent's opinion.

A Libel must be published so as a man may be libelous & both it will not be a libel if the character broken when & the paper published. — In this case the publication will be libelle

As to what is a publishment, is difficult to point out, for it must depend upon the circumstances, as if a man should through the neighbourhood reading the story published — in a news paper — it will be libel, but if he read it & the parties & there it will not happen it, it will not be libelle — for here it is apparent there is no malice

Def had been libelled by Plff. so he wished to give it in evidence, & it was admitted, by the Ct. but not on the ground that the retaliation was justifiable but as in mitigation of damages but it was shown to be an answer, to a libel

/1 Johns. 280/ Published by Plff in which Def. was ridiculed

Ag. La. was Dr. Duncan decided as I am told except in the State of Ky. & Conn. A man writes a sealed letter to a man full of libelous matter, is a libel or not, yes — or the printer be shd be liable to a publication from it — or it endanger the

the pleas. But it does not be liable to a
pris. ac. as the libel is not to be proved
for he is the only witness, but he is a
good witness in a pub. pros. And by
publication is meant to entitle the pl. in
to damages. And this case there is no publication
Claims 500. wh can be proved, —

Malicious Prosecution.

This is the
suing a man without proper cause, &
commits by malice. A sign to this is a
vexatious lawsuit. — It shall first of them
in succession

Vexatious Lawsuit differs from libel, pros
ac. in that the latter is not for on ac. of the
top of the, upon taking, in ex. law. thence
plaintiff
ascertained,

In spite of the foregoing, this suit
& prop. of this Action, must be the object, &
it must be brot. with the knowledge of a
want of claim; Damages are found upon
the principle Tho if the cause of ac. is
a good one, but is conducted in a way but
it is a good cause of ac. in favour of deft.

It has however been quest. whether
if man was guilty more tho. the ac. for
many shot & up, think that the ac. for mal.
pros. will not lie

Dixon on that ground of case was one of vexatious lawsuits. The Ct. is the Judges as to Ct of in com. Not jurisdiction; how all the above def. has been said at law he is entitled to recover in an act. for vexatious lawsuits. Bull. N.P. 14. Thus. He is to be allowed that the next suit arose before the act. in question upon the motion it will not affect it be vexatious. At one was necessary that there shd have been an acquittal, secus, now.

2d. A man sues when he knows he has no right to recover the suit is vexatious.

A case now in ct a young woman and a man for raping she was 16. the suit proceeded but was withdrawn when it full come, that it being proved the def was able to prove the assertion, that for vexatious was then brot agt him. If the Ct told agt two diffs, that the suit was vexatious. Bro. Ab. 128. 1 Saund 228. 1 Bac. Ab. 206 a bad case. 4 Co 14.

3d. Clerk &c when a man may have a right to recover but on comments & suits as to render it malicious, that owes $50. Recovers him for $500. Now there is a difficulty in getting bail in order to cont. get it the 2d have got it for the $50. def goes to gaol of course. Now as B. cannot recover that the $50 remaining still he is liable for 4 mch imprisonment in

in consequence of the malicious way of conducting the suit.

So when it held a note of B. of $1000. the money could not be obtained at any time but it had been agreed in the street of Bl. (Book 266. Folio 114) for the purpose of defeating the Pltff's — many damages could not be recovered in such case.

The recovery in this case is liberal damages tho' the ground is a title of Chancery, but the title of one of the parties as it is the rule of damages. One does not give little damages if join the man in the bargain. — —

Malicious Prosecution

For a slander for a crime. This is one of those kinds of slander in which the jury give higher damages than in most others, as life of liberty has been or may be endangered.

Malice caused the slander to be uttered, as the informers of Pltff in a qui tam slander &c. is considered as the slander.

The great injury here is to the reputation of the injured. — If the injury Law can have under the arm of the law, no slander can be maintained,

It must have been commenced

without probable cause, & with malice, & no matter how much malice if there was a probable cause, no action will lie for mal. pros."

Probable cause is when there is a concurrence of circumstances at a conviction from man, one of whom for the good of his country thinks, that are sufficient warrant & authority for pros.", & a man paid me money & then demanded it afterwards & such person is a stater, the man to whom it gave it afterwards attempted & prosecuted him warrantly, held to be no mal. pros."

It is now held that there must in fact have been a felony committed or there will be no malicious pros."; if the case was exhibiting a felony, — even no probable cause.

Ag." a man tho." that he had lost his horse by theft
Pursuant in pursuit & found a stray following the same. Taken up & the horse with he was riding. Now had this person been taken he will probably have been committed tho' he was innocent of the felony. — there surely there was probable cause for a pros."
in Bull N P 16. Vaux Hern cited Clark 58. —

In order to entitle the Plff to a recovery for mal. pros. it is required that malice shall be proved, & no malice without probable cause will not warrant a recovery. — in fact these 2 qualifications must be concurrent. —

The word malice is known

in the same case it is said in end of the title of Slander Indeed there the case is criminally and in the case

Now if a man is indicted by the grand jury - & he is acquitted by the petit jury, the finding of the indictment by the G^d jury raises the presumption that he is guilty so that proof for Def^t Pros^r must prove the absolute want of probable cause Altho' if the Pros^r was not by the grand jury, then def^t has the onus probandi - & the existence of probable cause

Def^t only hope is in proving the malice of def^t. It is necessary for him also to prove the want of probable cause, & the proof of this implies the malice

The only effect of the indictment by the G^d Jury is to throw all the onus probandi upon the Def^t.

All the authorities spoken of above are actions on the case, But we now come to the injuries to the person. Law & complete those our remarks as to the injuries to a mans reputation, & the actions will be brought for injuries to the person are actions of Trespass vi et armis. -

Of Assaults.

These are all cases of the Pl. for vi et armis.

An assault is an attempt with force & violence to do a corporal hurt. - & for this an act will lie, & is distinguished from a battery in this that it is an attempt to do the hurt if done will amt to a battery

2 Jonnailles, of this act, the 1st was done to def[t] feelings as well as to the injury done by detaining him from his business

An assault can never be accomplished by mere words. Per Judge Blackstone, but a man may use such words, & use words of threat, as will prevent an act going about his business. But then these words will not support an act for an assault. Tho it will a act on the case, 3 Bl. 120.

Remaining actions will amt to an assault, as raising a cane, & such threatening words but must be done in a situation in wh. def[t] is able to accomplish his threat if he pleased, shaking a fist at distance is no assault -

Threats are not necessary to constitute an assault.

Bl. says that if there are words for pleased and to end, they must be such

ac. In this case the men could have the agent off more but arrest in a civil action objects as soon as known & the agent discharged, the acts of the officers are deemed & the Ct as involuntary. Where one in the hall the prisoner threw it with intention of continuing the affray, case will have been the remedy, but if arrest will be as the other case cast upon who threw it, as B.C. Peb.

If strike a man & he jumps on C. the battery in this is assault

Abandonment will depend from everything on finding no ac. will lie, but then this must be accidental. for if there was foul play an ac. will lie, & if there was contempt. But for diamond acts gen. not action lie, for the damages not arise, B.M.W. 16 Vaux adm.

Obj. a gen. way among the Eng. Judges. Whether when two agree to fix & one is found the injured can recover? It is said that the agreement is void & therefore there shall be a recovery. as if there had been no agreement. Now this Ord. day was a mean why there shd be no money. So as by the agreement does an unlawful act, he shall not be assisted in any thing wh grows out of it. By the analogy of contract this will be the case. & this is the requisition of Police, B.R. N.16. 2 Lev 174

Ob. to justifies. he should & battery is false imprisonment

in doing an unlawful act, an action will lie ag't him altho the injury was accidental.

But if he was doing a lawful act & doing it with ordinary care, he is not to be liable, altho he was cutting wood. This act has been in the custom of flying off the helve, now as it is by the will of a child no action by Def. at P's suit if it hurt the child it is not to be liable. But in the former case defendant is to a lot to shoot his neighbours horse & he wounds a man - he is to be liable. So that the principle is that if he is about unlawful business, he can will not avail him, tho if about lawful business, he can justify him as Def. in Ewbd.

The injury must be an immediate injury or the party is at a loss will not lie, for consequential damages. Trespass on the case must be Ev'd, as if a man throws out a stick of wood & hits Plff. Here &c. lies but if he laid it - in the street & Pat trips Plff fell on it. Here on the case must be Ev'd, as the spirit was Thrown into a comp'y. it was thrown from one to another till it hit Plff in the eye, - Quere? whether trespass if it is a case at P's to prove - Def. &c is the time

On this subject there is a great deal of confusion in the books. But see 11 Ala. 1065 & 14 Ala. 400 & 1 Ala. Law.

The cases where the arrest is illegal & the officer liable & others where the arrest is illegal & the officer not liable.

The Gen. Rule is, Whenever it appears on the face of the warrant that the officer has no authority as that the Ca. ad. issued &c. & the officer thereon will be liable, but if this want of auc. does not appear on the face of the warrant, officer is not liable.

Now every officer is supposed to know the law of the land & is bound to comprehend the meaning of the law. Now 6 B. Mon. 110 says a warrant issued from a Justices Court to carry off & keep servant of another is void & the officer liable for false imprisonment for want of auc. as appears on the face of the warrant. But a Justice has jurisdiction to render judgt. for $15 & may thereby have authority for $30. Now an execution for $30, does not show it.

want of auc. on the face of it; it must appear that it was issued for a debt.

When the warrant is without auc. but does not appear upon the face of it the officer is not liable. But the officer in the case in 10 Ala. 70. La. Rep. 229.

This case was decided in the Winchester case 10 Ala. 70. where the officer was held liable, & false imprisonment & amounts a case within the

False Imprisonment.

Trespass is
denominated by means of force vi et armis

False imp-
risonment includes both an assault &
battery.

It consists in restraining the liberty
of locomotion either done without
authority, or with due. If in an un-
lawful manner.

It is not at all material
that the person should be confined in a gaol
for a considerable time, or in any other
place amounts to a false imp.t

An imprisonment
by a Judge or an erroneous judgment of the Court
and of Judges of the Superior Courts but not of such as
have a Gen.l jurisdiction, Justices of the
Peace have not this Gen.l jurisd.n, / (Justices of P.) They
are accountable for all their acts. — an
imprisonment there for a considerable time
until they have an opportunity of making a false
imprisonment, for if one does a wrong
Court when they have power it is to their
own folly,

This action is more usually brought
against Officers for illegal arrest

It is by the Stat. 1 Car. 1. c. 1. made an offence punishable by fine & imprisonment for any person to be present at any unlawful assembly & not to disperse upon proclamation made for that purpose by the Sheriff of the County or his deputy or by the Justices of the Peace or any of them. 1 Hawk. P.C. 65. 1 Burn. J. 280. Stat. 7 Geo. 1. c. 5. 1 Salk. 596. 1 Hawk. 95.

Every session shall begin on Tuesday & the false imprisonment in all cases except those of felony & escapes, there are exceptions to the general rules; as to bail in case of Bail, but in this case the Bail does not take the Principal by virtue of any warrant for this bail there is a writ of Habeas Corpus to the Gaoler of the King's Bail, & satisfies him that he has a right to have the arrest.

How can a man have a warrant on Tuesday & have false imprisonment until Monday & the arrest then regularly is this false imprisonment?

In Leymans case it was decided that there was good, but in Samuels case Coup. 1. this contra is decided; We read on these cases as analogous, Now an arrest by breaking a man's castle is illegal, Now in the above case the guest's room, was illegal, the Bailiff only forced the latch & in Leymans case decided the key must be made after the door is broken. & the Officer? he had a right for a time by the breaking the door. In Samuels case, the guest's room was entered in consequence of the door not being broken by a unlocked door. it being in a large

twelve miles from the Town when the steamer Col of B. R was then sitting. This case was declared to be not law in the case in Lt Ray 229. and case 2 Str 1184.

The case in 2 Str 1184 was ex. that a Warrant issued to a Justice of B. R. to send a Petition to Genl Assembly for grant of insolvency, & also issued a protection while attend. the Assembly. The last was granted, while B. was going down to Hartford & tried the case on the ground that the Genl Assembly had not power to grant the protection any if it had the case, it had come in this Justice's case, the Genl Assembly found in Habeas corp. & the officer returned def. (prisoner) & then had his action ag. the Offr, on the case came into the H. of L. on the question whether Assembly had power, decided the Offr had done right in obeying the Justice provided the Genl Assembly has power to make Insolvent acts, or grant petitions, for this the Assembly had a right to do being a Court of Chancery 2 Mod 195.

By the Old all private acts done on Sunday were void since it did not extend to Ministerial acts.

another it is the duty of the third person to do any thing he can & presume it. Vide Ashton afterwards & the Evidence that the Offr was not alone to do the thing he ashton to be about to do, & [illegible] be justified.

1st Warrant

ut is good on the face & will as aforesaid above justify the Officer in an assault & indeed he may justify any violent beating & even wounding more than

If the Offr in his suit complain of nothing but the assault & battery & imprisonment Offr may justify under a warrant. But the warrant must be stated & it may appear that the arrest was illegal. But if Offr complain of battery & wounding Offr must plead that Offr resisted in addition to the virtue of his warrant. How much violence may be used by the Officer is not precisely to be ascertained, for it is the duty of the officer to take the man he has a warrant for & he must proceed & sometimes before he may act & man go — the warrant then justifies only the taking, not the battery further than mere taking / Blank 139 /

An assault first by Offr is a good defence. It is a common one for no more is allowed to wait & be beaten but he may defend himself, & even if Offr did not strike the first blow & defence will

house acted such men had the own advantages, but the Ct did not refer at all to Semayne case but allowed the question as to its being an outward or inward door, to be argued thereby implying that they differed from the decision in Semayne case, as if the latter was confined to the outward doors. It is a rule that no man shall derive any benefit from a breach of the voluntary laws of society. this argument was not used in either of the above cases, but it is one of universal nature, we therefore may make this advantage and be derived from the Sundays arrest. There are cases however in wh it is necessary that to enforce the laws of society, in such case he shd get the end, but not otherwise 5 Mod 93. Comyns 406. 1 Atk 157. 2 Wil. 325. 2 Burr 1045 &c. 6 Mod 95. 1 Ld Raym 455. 5 id 178. wh shd unmyndfully strike Bs horse, B demands a indicting wh Ds refuses, B. shoots him off, how this, shd a breach of the laws which will not dispense this benefit from his act,

Justification of Battery &c

Battery & Assault Imprisonment in the language of the Laws, may be justified.

There are cases in which it is required & others in wh it may be justified, wh if one is about to beat another

3d A third defence is the plea of Inevitable
necessity or parcels, i.e. when a man breaks
an other mans defence of his person either real
or personal, as contradistinguished from
a defence of his person, as if a man or a
attempt to break his house, he may
break him down with a club. 8 H. 6.
Plea above will avail. 1 Lil 62. 1 Salk 64.
But a man has no right to retake his
goods by violence when it is once taken
away. tho' he may do it peaceably - he shall
not break the publick peace, but
shall take his remedy by Law - but he
could not regard the peace to save to
recover his goods & detain them from him
he would attacker will justify & say they
they will go in mitigation of damages.

4th Plea
But a mere Assault will go in mitigation of
damages, this must be so for qualified as
to apply to every injury but does not
mind entitled it with ample cause

5th A child under certain circumstances may use
be found. Lil' not the Master, &c &c. But
no offence that can be justified. The defence or
Battery or Murder &c. this sometimes avails
sometimes not - Above the rule here
is the only "moderate chastise" them, but

will be good. if Deft had advanced with threats &c. But, Deft may in such case beat Pltff but must. but how much beating he was justifiable in giving is not asserted; & none is stated but how the quarrel originated. Pltff had no right to strike Deft but gives no quarter to his passion, no more if Deft had made use of his extraordinary strength & other advantage of the circumstances & greatly his neighbour, his defence of passion & first assault will not avail, he may only defend himself. —
Circumstances should, then, determine to an all considered & will go to the enhancing or mitigation of damages. —

Should Deft may have justify the beating of Pltff so as to prevent his completing the intended injury. 1 Lutw 642. 1 Lev 246.

2d If the said Plat upon a man father, child wife or servt or other one assaulted he may justify a battery in their defence — how it is not meant by this, that if such an one find he can by fighting it does not mean, that he may fall upon Pltff & beat him he may only do what himself was justifiable in doing. Who may have a right to the part in a quarrel further than he himself is, this he can make allowance for the natural feelings of Parents &c

is done in no other case. So Lit 2 Co. 236
Penrice ~~does~~ has not been acted upon in
this county. B.N.P. 66 Mait.

2d Vaughan 180 Chancery to one had
in Trespass et armis, for cutting, & mile
& a bar & any other ct. afterwards brot.
action for damages may have arisen, subsq.
to the survey, wch. could not have been
foreseen, as a mere eye was then made
cutting, & afterwards cut in consequence
no one at the time of survey, tho' the
eye was in danger, as at Law the other
damages are not sustained. - The Court
is here as in slander, that you recover
at once all that can be recovered, the
is not the case wch. at Law in the case gen-
erally - as in case of a covenant &c. recover
for the damage sustained upto the date
of the writ. Hack 11.

Several joint Trespassers
are joined in a writ how staying in the
case have no right to recover the damages
but must bring in a joint action agt.
the whole - for tho' he has a right to recover
all the damages of either of them, yet
staying intend to give the staying but
now he may be entitled of the damages
recovered, as one of the Rights may be
a Tenant in Fee. - Two actions are to be brot
for failure of recovery in them, because if

but the rule that is, a just question for adjustment in the mind of one person is unjust in the view of another, so that nothing is to be taken from the rule & we will not argue whether it is or ought to be this. — But when persons are acting in a judicial capacity, they are never ought to be punished for an error in judgt, but when deliberately committed with malicious intent they ought to be punished & malice may be evidenced by the gross inadequacy of the punishment and may be evidenced by circumstances, as by stabbing a female with a knife &c &c. An action in B.R. a father joined in & the child, the child got his arm cut off, father joining gave him the damages, the injury was made a subject by the violence, but then all think he ought to be acquitted whether what was done was done conscientiously, see BC, Dom. 3 vol. 120.

Malheim, Lord who a man is deprived of the use of a member, is not put in right with, also he is taking a man's thumb off.
Now in Eng in this case after the jury have given damages, the Ct sometimes enjoins may increase the damages. This I believe

in arrest of judgment & there a jt verdict rendered. -
the defts in these actns are liable severally, although
they may plead the same plea - this is because one
may be found not guilty, when the other may be
found guilty; how the jury bring in entire damages
agt the defts - this is illegal for the verdict ought to be
joint, now the Plff is injured, unless he can have
a jt recovery agt the whole tho he may take out
the greatest sum, agt the whole altho the sum
was assessed agt one, but the Plff cannot
execute of this verdict but may move in arrest
[illegible]

dgt. If the defts plead diffr pleas, how there are
three diffr trials then the Jury find 2 defts - all
are found guilty, & different sums in damages
are given agt each, how the Plff cannot recover
but one sum in for no man shall have more than
one satisfaction, In this case then Plff must
take out fi fa agt the defts of upon the verdict
which first rendered, the Jury can never sever the damages,
It follows then that the first verdict is the only one
that can legally be rendered, & the Jury trys the whole
merits of the case & decide how much is due to the Plff.

So if one deft had plead not guilty, & as to the dam?
& damages were assessed agt the first. / 2 Wils 20.
Cro Jac 350. 1 Bos & Pul 6. 7. / The statute of the 4 Ann ch
16 the 1822. / proceeds are necessary & damages having
been determined by the verdict agt first defts -

By the old law diffr acts
11 to 5 / agt diffr persons & per diffr - Latterly may have

it is nothing in law that the whole damages are recovered

But then the defts may plead diff. pleas. as D. pleads son assault. damage. C pleads that he had a warrant. D pleads 8 ejm[t] ejus, - now Lee then must be three defts-that is they must be tried at diff. times, how the jury find as to the first. for Plff. as to C. for Plff as to D. for Plff. & then the jury diff as to damages as 500 agt D. 1000 agt C. 2000 agt D, now then the Plff has a right to all those damages as the jury find that this was the damage suffered by him, & by the law Plff is entitled to all the damage agt any one of defts. Rule f. 384. - 11 B. 56. but cannot award B v C. for 2000. D pleads not guilty. C demurs. Both found for Plff. & the jury assessed damages at 2000, so that the affairs as to the damage suffered it was fair they that Plff should have 2000 agt B & C, being the whole damage - how the damages cannot be divided how Plff is to take out a fi. fa. agt all the defts for the amount of all the sums found & damages but the costs & damages [illegible] must be taken out de melioribus damnis. - it is for the benefit of Plff this goes out jointly agt the whole, B. B. P. 21. but Plff may if he please take out more than one writ against the parties - he may move in

Injuries to Property Personal

There are remedied by three actions, trespass vi et armis, trover, & replevin

1st Trespass vi et armis, for immediate or original injury done by one to the goods of another. This action must always be for a misfeasance not a nonfeasance - it must be for some thing positive, action on the case is the remedy for nonfeasance &c.

Any man who takes away the property of another either in trespass or trover, as if he take the whole but if the injury terminate in the property itself it is not the only remedy as if a bailee loses - Now the distinction between these cases is often very nice, but the last action of a prop. will give a right to the action of trover,

In gen. trespass lies in all cases in which trover will, tho' in the one action there is a destruction, there concurs when, & took it was lawful void &c. but there alone with dem. when you know not of the conversion The action of trespass is founded on prop. but laid down in the books that whenever the prop. may have this action but it is not correct, tenant for life may have trespass against a stranger but not against a reversioner in the middle time & hold against any person or patentee 1 Bac 430. Dig. Cyc & Bac Ab.

Ag. The prop. must be

be joined in the same ac.n

Court of Exchequer

Court of Exchequer Transaction of a Tenancy by Lease
this gives two suits the one by Deft for
damages & other by the Public for a breach
of Revenue

Many attempts have been made to give
a Junior Court Jurisdiction in civil matters under the
Writ of Error, for private damages. But
dismissed in many points however
just & proper the case that Appears
Admitted by the oath of evidence or the
Public that, if he may do the Crime
he ought most at all intended, that it is
no longer true if he were but permitted
Smaller part of that verdict in the ac.n for
the private injury

and a verdict obtained agt.
Deft ~~obt~~ in the private ac.n cannot be given in
evidence in the Public Prosecution — for the
actions are between diff.t parties. —

adduce it in evidence so that in the case the Plff is guilty of an absolute misfeasance & Bold 561

When the license is given by the Statute & by the law, the abuse of it does not make him a trespasser ab initio to a action of Trespass &c. Case of a Shepherd killing the dogs.

But in case of fraud, trespass will lie, but this is on the ground of no license having been given, Lind. B.L.

A fraudulent judgment was obtained by fraud will be void, this former does not appear upon the face of the Record, so that a Deft into court is not liable but the Plff who obtained it is liable in trespass &c. This judgt will be set aside in a summary way.

If the judgt was erroneous & on appeal was will be set aside either by Deft or Plff. However it is reversed before execution was awarded & the Deft is not a good judgt as to Plff. Hargo

Now if an axe is given by the same &c. the axe must be stated by sound or the man will be liable in trespass as at common law, & by statute law a night to take cattle found damage feasant but he is also required to give notice, & if no notice was given, then he will lie, & this even tho the owner of the cattle knew they were taken

a lawful poss:, tho' he may maintain an
act in some case in wh it may be said
the poss: of def: was unlawful - as there
is a distinct plead the poss: of ownership
but if the poss: was attained feloniously
no act: will lie. Law. MR 1227. -

When a license is obtained
by law if that license is plead, the ag:
license will not shelter him ag: an act: of
trespass vi et armis, tho' if the license had
been from the individual, the act: will
not lie, as Trustee of furniture of a tavern, it
being by a license given by law for every
man to enter a Tavern, - the husband
must be a misfeasance - it shall be no
non tort nor to render def: ab
initio, Bul. NP 81.

So this is to be an exception, That when
a Off: has had a writ put in his hands
to arrest & he does it
& afterwards neglects or does not to return
his writ & he does not return it if the act:
afterwards bring his act: ag: the Off:
it will be sustained, - How this is no exception
for otherwise by Off: to use his care
that he cannot serve his process, the writ
has never been returned it cannot be
admitted in evid:, It is not the mainspr:
of the Off: that neglects him, but the
want of evidence of the fact: a want:
because a writ was not returned he cannot

Case of [illegible] offend, & the case good. How
if under such circumstances still an action
to gaol, a question arises whether the ci
at the said is mill for the nuisance or of
violence, on the contrary contended that it
is merely a non feasance on the part of
the city in not taking care. decided is
mill not civil in Rad Cas. 196. (Little v
Corn.) Holding this civil action, for the moment
of Water & case to all cases that the
impairs an act of violence

Quere, civil action will
not lie for consequential damages. What
are their causes & damages. ?
If water stands not flood or dike down so
that the water set on A's land, qui. if this
civil lie? If the nuisance a tangible act seems
that this civil not lie; but it was an intan-
gible act as a mere tenement forma making
&c nuisance

Case of making a dam, & raise a
pond of water, is a tangible act if dam fly
on your own land. But the damage arising
to neighbours, is this in the case.

and so if
one turn a stream of water on his own land
case is the action Lit. 24. 2d Roy 1292/4 the
injures his neighbours
The injury must be "immediate," in this civil &c
how what does it mean? when the injury

4 Inst 391. 2 Roll 555.

there exists this diff
between the intended Ly with a mans Land
will defend a man agt the au of his
&c. there is no mod: case of this kind, but
formerly if he was no defender, & getting
a new one out of the mine, - but do not
relieve the old case in 4 Inst now to be
law. tho' I doe, no reason - for the diff

Thorn will tie wch that w^d not alt &
taking was tortious, where & how & taken
B. the Ld's wills it & B. now here thorn
will tie agt B. the Ld's will not, as he
knew nothing of the tresp: - he is liable in
thorn because he attains no title, & w^d
not acquire a title had it passed through
10 hands, but in this case each subsq
pass: is liable to an au: at the suit of B.

If B take from A his fee & pass: this is thorn
& pass au: now if B sells & G. shd not main-
tain tresp: agt G. tho' he c^d thorn for he came
by d pass: legally, but as he has no title to
Ld^s more, the case must go agt him qui knows
est in tempore potior est in jure

There are
some cases in wch it is good & better thus
si et amis w^d cld,
now by Law a writ is allowd & take care of

of the act [illegible] the license to be taken in
[illegible] et amica

Suspicion is the foundation of
this act. A person [illegible] the [illegible] &
[illegible] whereon another [illegible] claims
the ownership. Law N.P. 1824.
Actual [illegible] actual [illegible] meets the
[illegible] inconvenience [illegible] this county.
The word [illegible] [illegible] and
[illegible] in [illegible]

Another set of cases like
this [illegible] a [illegible] of [illegible]. A [illegible]
[illegible] to B for one month, and during
this time B commits a [illegible] upon
[illegible] who [illegible] the act & is the gen'l
[illegible] man. B has a special [illegible]. The
injured, now [illegible] [illegible] that B can
never [illegible] Damages. This special injury
[illegible] upon the [illegible] [illegible] the act
first [illegible] & has accrued the gen'l damage
then B may bring his act. but he cannot
only [illegible] special damage. Ground of
act is that he was taken [illegible] the
[illegible] in the possibility may be answerable
but he is not allowed to decide this question
upon the trial of the act. but he may [illegible]
and immediately. This being answered we
not depend upon the [illegible] hatter and may
one [illegible] was not liable. he did not have
a right to the act. Now if [illegible]

arise from an act without the intervention of another rational agent. —

Held 2d. That a man cannot be found guilty on an indictment charging him with the offence of stealing, in that he did not take and carry away the property of another. For the felony includes the necessity of theft. Now in this country there is seldom such a thing as confiscation of property. The Queen neither can nor should claim upon the grounds of forfeiture. For the Public cannot be benefited. In such case the Queen is the thief not the owner. —

A man has a right to impound the cattle which get into his field, & he may drive them out with a dog. But this may be a dog which can do them no hurt. He has a right to keep with a dog, the property of the owner, 2 Roll 555. 1 Coke 96. Bro Ab 254. He cannot let loose the dog & let them run to the pound, for he will be liable if they were lost. He may drive them & if they find their own way out, it will be if they come from the highway Popl 151.

He had give a distress will a license to go upon the land after he is turned off. For he may drive away the property. Cro J 197.

1 Bg 25. 2 Roy 608.

between killing cattle of different persons
if a man enters upon the land of another
& kills beasts feræ naturæ, the property
upon the land vests in the killer.
But if the beasts are domitæ, altho'
upon a par at large & returning
at night, they are as much a man's goods
as his own. 2 Roll 565.

Goods are delivered by one
man to another, & he appears to be the
apparent owner, tho' he is not so in fact &
bailee stipulates to keep them till called
for by bailor, & the true owner calls for them
but hears the bailee is not obliged to deliver
them to the true owner, but that he must
turn them to him himself immediately, & he
continues to the suit brought
against him, then bailee may deliver it over
but he must then give him indemnification, or
else does it at his own risk. Roll 565. 1 Bac 242.
Fitzh 137. 1 Bac 237. see tit. Bailet. Gen. Rules for -

the action first the words all claim &c
Lalett Vol. Pet. 5. 1 Lid 85 & Hall 569.

Defendant
instructing proposes and pay a sum to
support this action - has no claim of title
or right to the premises. He therefore may have
an injunction to restrain him from
committing any waste or other injurious
acts to the premises. He also in case of the knowledge of the
defendant of this suit and his
proceedings thereon, that he may maintain
the action for the agreement & the
proceeds from his proposed license

The Officer is liable for the sheriff's
return on an execution as much as if the writ is
by fraud, & if the sheriff take the sheriff's return
to the execution against B, how the sheriff is not
liable to pay in case of his inventing
a return contrary to the order of
the Court in execution. Where a writ says "that sheriff
shall cause to be made, and pay unto A"
if he says "you" the sheriff may have the relief
against the sheriff. - for here the direction to
pay includes the indemnification,

Where a person has
ordered & a man has a fraudulent warrant to
arrest, himself & he is legal. He had his
remedy against the officer who arrested
him and himself. 1 Wils 85.

Thus a deft. Attorney -

to dest.— Now there is no intention to convert to his own use, & there many other cases,
In fact if you can convince the jury with a view to deliver up, when circumstances will account there is no conversion.

This action is only confined in its operation to personal property. So that a man take corn upon the field lower will not be corn so as to vest the property.— Where the wrong is trespass there the distinction is nice, but it is a nice subject
If a man cuts down a tree Young it is immediately [by an] continued act.
it will be but trespass & he may sell & leave it after it is cut down & go afterwards & bring it away it will be [illegible]

The Defendant's counsel in answer that he had a special property in the thing & that defendant & plaintiff by found it was mere any wrong. & the deft converted it, & to prove the conversion & the original use of proving & demand,— & if deft committed a tortious act. anterior of proving the conversion, it is implied and even when the law requires the demand & refusal there is no need it did after the deft. but the evidence of it only is required the conversion is proved & the wrongful act

Action of Trover.

The action of Trover
ends upon the ground that the Property
was found, but it is now brought in
abuse as case in wh the Pltff
Property of another is taken away &
it ought not the mode of Satisfy.

A mile lies in 3 cases. 1st Where Defft
comes wrongfully by the goods but then
has Property is convenient.
2d Where he came by them rightfully
but has exercised the act of ownership
over them not wrongful, but
but has does not as sold the horse
3d When he came rightfully by the Pltffs
but has exercised no right of ownership
over them if but he will not deliver
the goods upon him the non-delivery is
evidence of conversion, in an Demand, wh
is made by him, tho it is not in the
two former cases, - A Demand is alt that
is made for Pltff to prove.

But a Demand
refused is not always evidence of conversion
when the Defft came by the goods lawfully
as the finder of a watch, & applies for it,
& the owner is not satisfactory to

but by this rule, the Pltff's
bailor has on the article certain 9 cents
& the reason for the Bond with
Pltff & Pltff's for a given time, & therefore
seems by this rule as much of a
debt as can be

Any man who has the
Pltff may maintain this act" on the mat.
for interest in time for which act"
lies, but this max" is not universal
& is subject to the qualification that the
equities of the parties must be equal
& & not such as would
by & & C. deem unconscionable to those of C.
for he contributed to the Pltff" in suffering
himself to be imposed upon. by B.

If collateral article are stolen the Pltff will
not Pltff by a sale, & money as Bank bills
&c will Pltff. & this is on the ground of
holding, that the currency may never be
injured, If money in a bag was stolen, &
the it Not the bag of money & be recovered
for it can be identified as Case vs Butler
Bean 452. &c, the only question is mixed
currency among men

& judgt in favor of
one of several money &c. will be a bar, agt
any other act" agt the same parties, & indeed
the judgt" is a complete satisfaction, the

Pltf. must not be found when the Jury is called & found. for the Pltf. damages the Pltf.

The effect of a jury in Trover — a person of deft, & the is vest in the Pltf. in deft. & that, as much as if he had bot. it, — the Pltf. recovers the entire damages & the Deft. thereby who had known & articles a jury ag. one of them costs & Damages in Trover

There are cases in wh. the ~~value~~ damages assessed on the article be returned, this returning of the article goes in mitigation of damages but then see the judgt. will not vest the Property in the Deft. But. N.P. 1st Trover. Esp. 1st Dr. Bac Abr. tit. Trover,

It was observed under the ar. of Pltf. that the special Jury Com had a right to recover of the Def. it is to the same thing in this ar. of Trover, and the taking goods being the ar. he ought to be entitled to recover the whole damages in addn. to the special Damages, while and the taking first recovers ag. Trover, he can recover the gen. Damages alone & leave Taylor to recover his spec. Damages.

It is to be borne as a rule that if Taylor and Trover the title of Taylor. Taylor can have an action of Trover or Pltf. but he has the remedy any Def. in any case, Why this is no Doubt

Rice v Adm[r] 5 Burr. - 2611

Lord M. to mon Jno

20 gals. of rum out of a hhd. & fills it up with water will Mans[d] action for the whole hhd?
of proof
It was allowed that Mans[d] action for the 20 gals. but not for the more hhd. but the Ct held & contra, & that depft was liable for the whole hhd. because he has acted the quality of the thing, he owned it a Lawful one - but this is a strange matter because it is a rule that men who acquire destroyed Property is as much to the owner as if they introduced the new specific.

The Jury

of the same roll City Tutor away while she was sole, & married after the marriage she & Jno Shine were a[t] Jer[y] concerning it, the conversion being after the marriage but these Facts might have been given in evidence the other way, has Lord could recall a[t] but for the Jury of the same county. Also in the case of Hunt & al. before the money was collected the judge ord[d] go to the wife, who did not the case if she was not joined in the a[t]

The proof of Loss is prima facie evidence of the proof but this presumption may be rebutted.

If a Deft in Ejectm^t for part there may be usual recovery ag^t usual tenant the last one recov^d can be issue, a Deft shall have but one satisfaction

It is said in the books that to g^d title there is no good Reason recd the gen^l issue & that upon it any thing else is given in evidence under the gen^l issue but this is not true in practice. & there is no reason for it

The Rule may in some case be obtained but in mitigation of Damages but it is seldom done, case of Pictures

One Ejectm^t cannot bring down ag^t the assignee as A & B own a house together, & this may be done when the article is destroyed, as A has theirs the house with the Deft & theirs will die

If the Deft of Parlour is invaded by a stranger there will die but he cannot bring the action in the names of all the partners; if they are not all joined Deft cannot take advantage of the non j^r under the gen^l issue, but it is said must be pleaded in abatement, & cannot give it in evid^e because he did invade the Deft of A. but he did the Deft of B. & therefore cannot plead not guilty. When one assumes & dies it runs to him & the Heir of Admr.

is common both in the county Court & Eq.
If cattle are taken damage feasant it is impounded
there as a temporary satisfaction for the
damage precisely as a mesne process is
taken & abides up in a gaol as a temp-
orary satisfaction, Here then a writ supposi-
-tious cannot maintain. The deft had no
right to impound the cattle as they had
got into his land once & left our power
& took them up in the road, — in this
case deft at once makes it an act of theft
in & arrests on behalf of deft.—

Elias } call the pros. at a Court held as
in Eq. Liberis & the Lord for the pay. of the
rent this then cais open a wide field for
the application of Landlords to come now the
field a Ct. was made enabling the Land to
obtain relief by application to the Landlord to
retain the distress on mere security for
pay. of the rent, — Ettes then — A (tenant) tells out
a writ ag. B (Land) charging Land with a
debt. & this is the case whether more cattle
were distrained than were equitable or not upon
the writ B enters his bond of security, Then
if no rent was due then B recovers ag. A
for a theft. & if rent was due then proc.
goes ag. the deft B. & A in replevin, — this is
strange.

Eq. If cattle pet. in, & Ct. Ct. finds them
in pound, B. replevies them out of pound Eq

Replevin

A Replevin may
be an adversary suit - & it may be nothing more than a suit to get back your goods which have been attached, distrained, (by substituting a bondsman)

As in case of rent Land Lord has a right to distrain upon the tenant for the amount of rent due. The Land Lord has often to much. The Law allows the tenant to have the amount of rent due being ascertained, to come with a bondsman for the pay^t of the rent, & then may retake the goods distrained. In this case there is no adversary suit. But, if tenant denies that he owes any rent, then the writ of Replevin, is nothing more nor less than an action of Debt.

The actions in this county are in some large towns, we will point them

What is a
distress will understood. —
Now in case judgment goes against tenant if he does not pay the rent due, he may return the cattle or goods which were distrained, & the Sheriff to do nothing then (or Land) will go
on the bondsman

2^d kind of Replevin is a

the fence was bad, the owner of the land has no right to damage, tho' the law of the fence was good. tho' if either horses or hogs get into the lot, the law demands that they are commonable, no matter whether the fence is good or bad.

In Com. we have a St. allowing towns to make by laws as to hogs, and if one hog when made thus commonable shall break into lot through good fence, the owner shall be liable for damage. & We must go back to the original rights of the hogs. — On this ground we found that they were liable to arrest in the highway if found in the street. Now in case of a By law allowing them to run in the street, it will only save the hogs from being found in case of their last the Indian hogs of freedom by going in the woods. Virginia or the marshes, and the owners of the hogs will be liable for the damage they may do by getting into lots, not mattering what is the state of the fence or if no fence at all, this decided in Comm. 462. What is a legal fence seems not to be ascertained by law. Vide Ed. I believe it must in every case be left to the jury to determine.

Ch. J. Parker gave

Y Courts Reasons among those that there is no law to be found upon this subject, & is governed by some of the principles, that, left to

by putting a Land Mark between the B high Road
agt A. And humbly [on hire] that there was good
fence, then how the cattle came agt B.
and the damage was done.
But now the cattle were found by A. in
the highway - he commences nothing agt
B. - If the cattle are found in his (A's)
land, then B will recover agt him
as in Trespass. i.e. the cattle have got
in through A's fence which was bad. -

This whole case arose out of the Liability
of the Eng Law. for the Liability is Law
given the Landlord the right to distrain,
Tenants & justice Mannwynd Tenant
and be bounded with is offered the Tenant -
by the Writ of Replevin, &c &c. Kind
of Writ of Replevin is com. in the U.S.
as well as in Engd viz. In case of Impound-
ing - In this case the cattle were
remain in pound as a security for the
damage and so there is a compromise
or writ of replevin taken out, in which
case the kind of security is taken as the
equivalent & the possn of the cattle. -
In what is to be taken from the above?
When may one Impound.

There are certain creatures
which are not commonable, & others, which are
Commonable Creatures as Neat cattle, Sheep
&c. So of these cattle get into a Close where the

my Title to N.y Land did accrue only the £500 of Liening all the said Land accrued to the Plff's Testators and Complained - Upon this subject there is no decision to the said Land Acts - How the Defts has placed the Plff's in as good as a situation as he has placed himself 2 Ab 348. 4 Ves. 498. & he should not be considered to do more. -

the owner of the land may kill them as pro
natura, but then they must be sent home to
their owner, & he cannot eat them himself
as he may pro natura; although there is no
remedy. — But if other creatures, do hurt
damage the ar: may be maintained ag:
the owner for the same:

If cattle get out of the
pound the right & action ag: owner, as it is
of the nature of an inspect: of law. & pound:
like the inspect: is a temporary satisfaction
and if the beasts escapes. the pound keeper
is liable for the escape indeed there is a
good deal of similarity between the two
branches of the law. —

In a writ of attain it is set
law that ex. the Lord shall recover his debt out
of the land of vanity? as if the district amount
to £500 only & the debt was afterwards found
to amount to £1000. Lo. shall Lord recover
the £1000. of E. the tenant or the £500
only? how hereupon is a diff: of opinions
From analogy it is easily solved. If ex.
man give a bail bond for B to appear at Ct. &
the man flies, & appears, bond is forfeited, But
the B did surrender himself
before the day of trial, then B & w: have the
benefit of B's body alone, & this in such
case as to all intents he had got, if B did
not afterwards appear. This therefore may that

ry an act" for a Decl. but this Question,
as Dean found nothing of it in the old books.
Where in Eng. Dist. does not acknowledge
this important must act of the quest"
not arise from the rule, "that the rule of
damages at C.L. is the rule of damages under
the St. on a/c the St. only gives the rule
of Damages, or ascertains the damages. Now
before the St. of Mert. & all the Effects was liable
on an escape for the whole debt. Then under
the St. of Mert. it gives an act" on the case
the same Damages must be found by the
jury, but if this was not so then & the law
say "even as much as can" &c. is im-
portant to ascertain whether this act" on the
case was in vogue before the St. of Mert?
Nominal Damages to be found. Contra
Bury that before the Statute? Then
a scintilla gives to be found as to the act" of Bag.
Dall 206. 1 D.R. 467 2 D.R 231. Stra 634. 2 Bl. Rep.
1056. 2 T.R. 645. 3 Bl 164.

Trap" it at arms lies for an im-
mediate injury; While Case lies for the conse-
quential, The difficulty arises from ascertaining
what is the meaning of the word "immediate"
a shot at Bose a Rad" shot is by the
ground was that the Act was the immediate
cause & commit to mischief & not by 1 Ld. 213.
Stra 638. 5 D 695.

Aff" & Bar drove as many home. Did an

Trespass on the Case.

The action lies in three classes of cases. 1st. For wrongs not accompanied with force. 2d. For consequential injuries arising from direct acts done with force 3d. For injuries arising from culpable omissions. - 2 Wils. 313. Stra 635.

In spite of these we have considered under the Head of Slander, Vexatious Lawsuits, Malicious Prosecutions (the last being Law waived) & we shall all as to make case.

Where acts, are done which are consequences of a direct act. - as if A. beats B's servt. loses the use of service - & B's consequential injury & B. from the act of A. & there the Law. A being on action of trespass is the act of A. Esp. L. 595. 2 Bl. R. 853. 2d May 1799. 2 T. R. 167.

Where culpable omissions as when a man neglects to do what is his duty & the neglect is as a part of real neglect to sign a mile a block - to record a deed, the trespass on the case lies for the injury.

This action is common and there any other But it was not known till the 13 Edw. 1st, Fitz Norman said there was one case in the Register before the conquest of the writ

about to commit a wilful injury; then the master is not liable. But if while pursuing his master's business he carelessly commits the injury he and the master is liable; in this case if has always been the law ever since the case 1 East 106. Where they held the servant in deserting his master's business in that case: thereby retaining the old principle that an injury the law 6 Bac Ab 625. / But as the master is liable by 2 Wm 442. / 2 Salk 441 / or by Lat: also an action 6 Bac 646. Bur 562. / And in the first case it was better and more reasonable that the one who put it into the power of another to do an injury should rather suffer than the person injured, Case Lew: that one Dan's master waggon driving over it ought to know of the old law that master and servant should be liable, but by the case in East, the servant is considered as deserting his master's business therefore the master is held not to be liable, But in the other case there is no desertion the master will be liable i.e. When the servant is doing negligence drives ought to. — This is like the case of a Sheriff. the Sheriff is always liable for the acts of his Deputy. & So the master is always liable for the injury arising from his servants driving a mare into the roof of a house he was driving tho there is here a slight diff: as the mischief was the horse or the impelled act: that the horse should not be injured. Cro 406. as to Sheriff Sandwich / 2 Mod 6 Sh. Esp. 638 & 5 R 154. —

injury, because Lot: Vanetta and, because the act of going into doing the mischief was invold not so in the case of the mad Ox. there the owner turned the Ox out of his own will; In the case at bar, Best was held liable for doing the wrong act in not into the Lincoln field where there were a great many people collected: 1 Bent 195. 2 Lev 172. 1 East 106.

Now when the person is hired the agent it matters not whether it is with his will or not. But when agent acting by implication of law, there the will & act must both concur. Master commands the Lent: to do an act. Master is liable, but if Lent: does an act ag[ainst] the will of the Mast: & Mast: will be liable but not in Trespass in the as in the former case, but he will be liable in Trespass on the case.

Judge Fillmore in answering the distinction between this & the case, says that if A & B throw a post table out by concurrent actions & hits C in the eye, he shall be liable to C in the eye, for there is no intervention of a second natural agent, when there a second natural agent intervenes case alone will lie.

When is the Master liable in Tort for the acts of his Lent: & when in case only? How can you the Lent: have the business, & was employed of his Master

but it has never prevailed, Douglas 41. —

2d It is said that any man who professes to do acts of a profession may render himself liable to an action for misconduct, tho if the act to be done is not in the line of his profession he will not be liable for want of skill, there is no remedy agt him, tho in case of an express contract to do the business skillfully, he will be liable but it is on the ground of the contract not on the construction of law. as if he take to any cloth to a blacksmith to be made into a coat by him, Blacksmith not liable unless on contract otherwise will lie agt a Quack for injuries done by him, but otherwise will not lie for injuries done after he character is generally known. 2 Ray 214. 2 Wils 359. Esp 2001. 3 Ld Raym 1656. 1 Com D 165.

It has been a question whether

3d the, or [illegible] any one [illegible] the health of stiff has been injured by the act of another when done professionally, as in case of the sale of bad wine; — Chow Ld Holt says there shd be no question about it, deft. shd be liable upon his undertaking warranty, that what he sells is good, but no other action will lie unless he knew the quality of his wines, then an action, will lie (ex delicto) and then action (ex contractu) can never arise in case of the warranty Com D 165. 4 Bac 52. 1 Roll 90. 93. 3 Ld 166. — Thus

The conclusion from is that when the Act does not
[illegible] 1 Bac 249. 1 Ld Raym 1083. 1 Show 1 Mod 1 Burr 2 Bl 993 / money
out by the command of Master, Servant is liable
in Trover to Master. But when Act is done by Lieut-
-enant by a negligently Master liable in case
Lieut is liable in Trover in Ex.

In case of an injury by a dog
strict remedy in all cases is by an action on the
case tho in the Law said that Trover will lie in some cases. viz. case of Evidence
3 Bl. Rep 1166. or 3d

Costs in an Exch on the Case will lie

This is the practice at Law
where an injury is sustained in consequence
of a crim: neglect of a duty imposed by law
as contradistinguished from a duty imposed
by contract. 1 Bl. Rep 351, 2 Bl. Rep 1166, the Law
by Law must keep them with ordinary
care, & an Officer is liable in all cases of
for damages not arising from crim: neglect
of the duty, as if some one a mile, shou knows no
need of keeping it the implied contract between
them & only that he will use ordinary care for the
Law requires that he does use all care &
diligence 1 Sid 82. 1 Lev 235. 1 Keb 905. 2 Bac Abr 163.

Adulterine
time has been allowed / Days 42. / between
the neglect of any Sheriff & return of a Writ

the action might have been maintained agt the
Deft for a wrong before the Dt of Pleas? but
the Contrary. — So action was maintained
all agt the Deft for an escape till 1st Rich 2.
& then debt was the action given, (Plowd)
tho the Books differ a little, & then too action of
debt began as remedied in a degree answered
2 Bac 245. — 1 Show 175. Carth 112, 2 Lutw 873.
4 Mod 1045. 2 Salk 126, 3 Mod 163-4

In case against Sheriff for
Damages in action of debt was given before

It has been
y^e^ said the proper remedy for escape is by Action
not to Distrain, this is not so because the party
cannot be impleaded in a collateral action it can
only be impleaded Generally Carth 141. 196. 2 Mod
213 2 Mod 31. 3 Mod 146. —

In case of escape on mesne process
& the Pltf can maintain no action agt the Sheriff unless
he has been guilty of some neglect for Deft is not
supposed to have the body committed with him
who on mesne process. Deft may have the party
in at any moment. tho he is not liable over, but
3 Bac 416. to the party agt whom he is liable — Carth 510
But if the escape is upon an arrest upon final pro-
cess then Sheriff is liable, & he may in the action
of escape, for the whole debt tort & all
the Sheriff is liable, because in such case he is pun-
ished & have the body com^d^ with him, & at least
the law presumes y^e^ Deft would do his duty &

this rule & returns from Al. Dict. laid down and where else. Tho' the are quoted semb. will warrant the rules, & this rule of the warranty tho' failure of the weapon cannot exempt Ep. 2. 601.

Animal which do mischief

Subject the d[efendant] animal is domesticated in such case the owner is not liable unless he has become aware of the bad character of the animal this science is of the gist of the act in case of a dog Law Letter 6 Ed. the mischievous animus of the dog must be known to owner, Ep. 2 501-2.

If a duck bite a goose no action lies for the mischief done if there in the first instance Com Dig. Action B 18. 1 Roll 4. 2 Ray 636. The Science may be proved under the gen[eral] issue. 2 Ray 636. Com Dig Pleader 2 S 4.

This act[ion] lies for the interruption of a d[efendant] the enjoym[en]t of a right, as of way, com[mon] water course, &c. 9 B 112. 1 Went 245. 2 in 186 Stra 5. 638.

Lays to day for an escape whether d[efendant] arrest was on mesne or final process tho' you may try it, on mesne process it must be tho' for you know not the am[oun]t of your debt & the escape. But if arrest was on final process action may lie tho'. for your debt is ascertained & the judg[men]t stands

Has his body not is now worth as much as before
Deft may have received his proportion. The whole debt must
be recovd. But it is a defence to recover it with costs
against Deft pro tanto only —
Else to entitle the Plff to recover the whole
sum he must prove that deft is worth
nothing; Or that he is worth something but
deft has gone & his proportion cannot be obtained
from him above that. —

Plff brings this suit in 1841 & claims
because he is attached, but Crdrs are not,
Both cannot recover contrary
against the whole
sum the either one may, But now Plff
recovers upon the ground of his liability, the
Crdrs are not obliged to look to Plff for
his debt, so that if Crdrs does not come up-
on the Plff. Plff shall be liable over to
deft for the sum, or the recovers for money
had & rec.d to their use — Or an may be
called to pay twice in the first instance
tho no man shall have more than one
satisfaction — the money will be refunded

Plff is not allowed to avail delay the
comment of his suit against the recovers
till the Crdrs have sued him. He sues as
he is liable / Crd Exon / & Crdrs he may
secure the recovers while in his power
Esp 2 610. 3. 5. 6.

Esp says that the suit not by the
Crdrs discharges the same by the Plff against the
recovers. This on the ground that the suit

prisoner of the rescue is by the enemies of the Country, deft is not liable in this case

Reasons on Calls in both cases over & the Contrs. the remuneration of the Ancient Indians exist, right of Ancient age of the Deft. But deft is not at all liable for a rescue upon mesne process provided there was no collusion or breach of duty & the rescue be may return & it is good evidence of the rescue, But such return cannot be made in case of final process 2 Ld 516.

Wh. Cond. Ling

Lis Ancient Reasons. The jury may give what damages they please, & are not confined to the orig. sum sued for, but reason may prove that his real is a man of property & then the defendants damages only nominal not depending the debt.

Proof of the deft insolvent not worth anything & Lead run away on being served the writ of Ca. Sa. to recover the whole debt he owed. of the rescuers. This on the ground that the body of deft is a satisfaction for the debt.

But if the deft does not run away, shall the whole debt may be recovered of rescuers although deft. was not worth a groat. But may shall not deft be obliged to take up with the body accordingly in all other cases? There is a conclusion in law, but as deft was taken upon him illegal process & in the illegal act, shall recover—

Cap D 613. Letter by Sheriff to Gaoler

The Gaoler is liable as well as the Sheriff to the orig[l] creditor if the act of Gaoler is wilful & malicious. Law. E. 399. Cap D 612.

Escapes

The comm[n] law doctrine of Escapes was this. —

They are two kinds vol[y] Negligent & Voll[y] to arrest & detain his person upon mesne process in a civil action, or upon execution after judgment. If the escape be voluntary, whether the party arrested or the officer or Gaoler, or any other person assisting him, it is a breach of the peace, & all the parties are guilty of a misdemeanor, & liable to fine & imprisonment at the discretion of the Court. But the Sheriff or Gaoler may arrest the party again at any time before the return of the writ, & may detain him in his own custody, or may commit him to the custody of his Gaoler, unless he can find bail for his appearance. If the escape be negligent, the party is still liable to be retaken, & detained in custody, until he satisfy the demand of the plaintiff, or put in bail for his appearance at the return of the writ. But the Sheriff or Gaoler, after the return of the writ, cannot retake the prisoner, it is false imprisonment, & he is liable to an action for damages. If the escape is negligent, but after the return of the writ, the Sheriff or Gaoler may plead in bar of the action, that the plaintiff has commenced an action against him for the escape, & that he is ready to bring the body of the prisoner into court, as directed by the writ, & may bring the money into court, which he has received on the execution, for the use of the plaintiff. Cap D 611.

If the Sheriff or Gaoler has taken bail for the appearance of the prisoner, & the bail render him in their own discharge, before the return of the writ, the Sheriff or Gaoler may detain him in his own custody, or may commit him to the custody of his Gaoler, unless he can find bail for his appearance. If the escape be negligent, the party is still liable to be retaken, & detained in custody, until he satisfy the demand of the plaintiff, or put in bail for his appearance at the return of the writ. But the Sheriff or Gaoler, after the return of the writ, cannot retake the prisoner, it is false imprisonment, & he is liable to an action for damages. If the escape is negligent, but after the return of the writ, the Sheriff or Gaoler may plead in bar of the action, that the plaintiff has commenced an action against him for the escape, & that he is ready to bring the body of the prisoner into court, as directed by the writ, & may bring the money into court, which he has received on the execution, for the use of the plaintiff. Cap D 611.

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Trespass on the case & issue & Ind. is a waiver of all claim agt the sheff. But this I consider immaterial — for the general is that Ind. must be satisfied or he may lose his ac. agt the owners. He will have a corpa dl. remedy if his claim agt the sheff is not discharged. Dyer 2 610.

The ac. may be bro. & sheff agt the escape. But the damages are diff. as the escape is an injury or mesne process & the sheff may bring his ac. & keep out until fin. for Ind. may also have an act. agt the escapee. Dyer 2 613.

If the escape is voluntary. Off. can never 9th
retake the escapee; for the law will not suffer a man to be kept in prison & then to be taken out of it by force. Yet if the escape was negligent, sheff may retake the prisoner. If there were hue & cry provided & he not taken before the writ is served upon him Dyer 2 611 5 Rep 115.

Bail. The
Gaoler or the sheff's escapes. Bonds are taken in order to the ends of Justice can be in no other cases but where the law gives no remedy against the ac. agt the escapee? There no deceit but Ind. is without relief as the sheff & have no ac. vs the Gaoler. But query if he may either

a want of professional skill, this exception
= / Esp D 514. / Wils 324 / made in favour of
attys in consequ of the Statute exceptions
5 of the Law. 4 Burr 2060. / Salk 86

attys may
become liable to the adversary of his client so
if he by some fraud or trick brings him into
difficulty, as, by obtaining a fraudulent judg
-ment this will no benefit to himself but
only to his client, and if afterwards attys
execution for this fraud after he has paid the
money paid over to his client, he cannot
ever the money back again / Dent. 125. 3
Wils 377. / As an Act from contention
agt another, the law will not assist
a person who has invalid Law.

Ignorance

Law includes Calls when the Ground of are
ignorance. - In 3 Wils Def was held
liable on the ground of his trying the experi-
ments.

Thus act of the agt Justices & Magistrates
acting in a ministerial capacity / 1 Ld 265. /
as if a person be sign a writ, Clerk to record a
deed &c. if the act must be a ministerial one
as to a judicial act the act will not lie -
There are some ministerial acts wh require the
operation of the judge. In those cases an error
will subject the offr as in case of a Sheriff upon
a false Return, he judges as to the sufficiency of

A Bond that Defft was to remain within the limits was good & Defts escape when can be sued & Cond. the escape not to be regd of any. But if the Defft did not keep his limits & off did not give notice thereof immediately on information of the escape & the cause of the limits being enlarged & did not escape.

In case of escape & return of the prisoner will save the act. agt the Sh. & for the limits will cut the recovery down to nominal damages, as the Cond. cannot be forfeited upon this Bond for the limits. Recd return is as good as a Bond upon Test Process 4 Bac 125. Esp D 811. Com. Rep 554.

But if the prisoner be off who had the liberty of the yard & then brought the act. agt the Sh. for the escape shortly after the limits was found the prisoner returned. But this proof after will avoid recovery no Cond. agt the Sh. for no one shall take advantage of his own wrong In this case I think we ought to recover enough to indemnify Defft for the time he had been at

This act of trespass case lies agt Sh. & his deputies for carrying an injury to the goods of another

Attorney is not liable for ignorance, but he is for negligence & breach of trust, how is it as a rule gen.? Attorneys are liable for

Surety of Admr. after Debts paid

This is where
there is no will, & there was a will he
shd act as Exr and have done

I am to notice
the Legislation 2d wh is the case of there will
the Dr of the U.S. as to distribution of
personalty & there points out the difference
of the Legislation from it. — the rule is now
of the Dr of Col. viz to all be distributed
as est in any State or Union.

The Statute
Charles provides that where a man dies Intst
& leaves a Wife & Children or repr of Child, the
whole remains, after payt of debts shall be
distributed three, ⅓ to the Widow as her
Dower. the other ⅔ to the Children or repr
reps

The word "Children" means
"issue" shall a 2d Decr line, to take
the wh literally of Child'd ed not take. — In the
same it is used in our Dr — the word
of Statute are more explicit & use 2d word
"issue"

We shall treat the enquiry as if there
was no widow & then the Children or
Repr reps take the whole

By "Representation" is
meant, where any of the Children are
dead in the time of, & the Children of the
Child'n take what their parent wd have taken

of the Cattle, & Teachers & Mr. Ld & pay thereto the Cattle was sufft. the Ld & be liable / Black 90.

It lies for a Tenant of Trust in Cattle, & in all cases of Cattle for the wrong of the Servant during the Term. Tenant for years may not entitled. 1. D. 83. Salk 10. Salk 2 655.

So other goods are injured or lost with the negligence of Master or Servant — but the Cattle then are diff. as to trespassing but as to any one of the owners, but of old it was said in the action be got all as it were in contention, but now they consider it as a thing severable / Salk 653. / Salk 446. / Str 654 Dyer 2 623 pro Tot

A Servant

Whatsoever Deputies under him, the Gr Cattle that is a Cattle of the Principal as well as subaltern. —

The case of Mr Bostock is an exception of the Gr Rule, he is not liable for the acts of his deputies; were he liable, he and not Cattle & stand long, so many does to deal with so many / Salk 15. Comyns 754. Dyer 2 24. 3 Wils 443. / Seniores a comparatione, a fine from Queen to the Deputies. He is an officer of Gr. not of P.M. & only appointed by him, Dept shall pay their own Salaries. —

Innkeepers & Inns.

Trespass case is the
action which is brought against Innkeepers for suffering goods
stolen at an inn. The defendt pleaded not guilty & issue
thereon. The case stated for opinion of the court that
Joseph Symons as he was leaving the house in broad daylight
with his portmanteau, which contained a gold watch &
other goods of the plaintiff's, was arrested & detained
by the constable of the parish upon a charge of felony
& that he was not a traveller. The liability of
innkeepers is founded on a principle of policy that as such
persons must be held to entertain all persons
indifferently who are willing to conform to the
regulations of the house & pay a reasonable price
for entertainment. Bac. Abr. Inns (D) 1 Dy 96. Jones B. 135.

The person entitled
to the remedy must be a guest i.e. one that
has lodged, one travelling thro' the county. But if
a neighbour stays a night or dines at an inn
& goes away at night, he is not a traveller, & in case
of robbery, the innkeeper is not liable for the goods he
may entertain; Moore 75. 2 Roll. R. 2. 6 Bac. Abr. 273.

The innkeeper
is not liable as such unless the goods are brought
within the house of the guest or his goods, & if a
guest goes out & leaves his goods, the innkeeper will
not be liable for the loss of those goods unless
he derives some benefit from the goods as bailee
as a horse &c. 1 Roll. R. 186. 1 Salk. 388.

If the goods which
are unfortunately stolen be those which the guest
has not, he would be liable for a loss or injury to
either & even those that he is liable for injury to the

the Lord alone, It is a principle that Man or
liable for his servants & the Lord is liable for his
keeping & I do think for the like qu:. — I found
opposite on Bailt Lib: 1 & Roll 85 3. Car 185-6. Lal 385. — Dyb D584.
Now suppose a man comes to an Inn rides off
my H. & he tells the Master he will return my H.
& he leaves the goods. How if he never can
gets his Masters part. Then no doubt Master
not be liable, but qu. whether he ought he
if he did not. / Rol. Abr 9 ; I think that if he
came as a guest he not be liable / Cro E. 628.
But if he left the goods then to go & visit a
friend Innk not liable. — for he is no guest. —

Sickness a Drowning &c is no excuse for the
Lop. Innk must at his peril provide
proper persons & take care while he
is in his hand Cro E 627. Dyb. D. 626.

But he is not liable for
an injury done by guests Servants or Officers
& Raby 8 Co 33. Dyb 2628.

Innk is obliged to take Victuals
all persons who come to the house provided
he can do it he being offered his emolument.
And then my H. he is not obliged to deliver his
Beast & him until he is paid he charges.
Dyb 2.

But Innk is excusable for not taking a Traveller
on the ground of his house being full or his
family being sick, 12 Hen 8 27. 3 H. 7 6 /
but in this case he must not take any body. If he
any he must take all till his house is full

9 Co 99. 1 Dy 156 Bul NP 270

The right of the Innk[r] to detain the person of guest for the charges and expences of the night is [illegible] to detain [illegible] a person of [illegible] for the fees due; a blacksmith may detain the horse, a taylor the coat, &c. If the guest will not pay, Innk[r] may not get a warrant to attain him but may do it per vi et armis for he has a mortgage a lien upon him but he must always take the horse in presence of the person of his guest and not restrain personal liberty. Ed P D. 584

Fraud in the sale is an ingredient for deceit found in the sale of goods &c.

1st False Warranty. Where words of the warranty are [illegible] for if the warranty is not good only an act of course lies known to the law. But here the advantage here is that assumpsit lie called for the fraud, for if the fraud warranty be indeed the purchase By Co. 80 a means a moderation Extinguishment of the [illegible] debt 211. want of title. Cro Jac 44. Yelv 20. 1 Roll 99. 1 Cons D. 165. pains &c.

2d False Affirmation. An affirmation may be false in fact, tho not falsely made & it may be falsely made i.e. when he knew it was false, in this case this action will lie

So this and there an exception if it is said he is not liable if the defect is visible, as he has but one eye if he sells a horse affirming him to be alle to see well he has one blind eye but it is not perceptible then he is not liable, if the horse was blind as was. It was urged on the other side since the old decision to under him liable 1 D Ray 116. 3 Dl 165. for if he did not know the horse was blind, not liable

If the purchaser was in a position to discover the defect, then is he bound. -

As to what is a false affirmation, has been some thing of a question & the law has extended from what it was what it is now the moral sense has become more nice, — Now if the affirm. was not in the circumstances of thing amount to a relation of a fact, & it will be false, but then would not be liable for an expression of an opinion - the maxim caveat emptor is not as strong as it used to be. If he says my horse is worth $200. or as I will sell for false affirm. But if he says D.R. offered me $150 yesterday & it is false, he is liable, 3 Dl 165. - 3 Sh 14, 5. -

Now as to how then has been no affirm. but a concealment of a defect not disclosed, the rule now is that what in good conscience a man ought to disclose that he is required to disclose, the time was when this concealment would not

not have been considered fraudulent. — but now, Caldy, for the case does not come within the maxim, that the Law does not care for fools & trifles. but the case will be 2 Ch 2682.

It is said that the covenant will not only extend to the case; but it also amounts to an implied warranty that the horse (for instance) is sound. but opinions seem to differ. Judges do not like to rely on an action upon the warranty. Now the case there is a delicate one. Suppose the seller sold an unsound horse for a sound one without knowledge of the defect. Fraud will not lie for there was none. Now shall vendor or vendee suffer the loss? Here a case in wh. Equity will interfere as in cases of the warranty. and the rule there adopted is. Whether the thing is worthless or not is the sine qua non of the contract. Mistakes avoid the contract — for here the minds of the parties do not meet.

But if a collateral quality of the subject matter only must be in question, but the contract will not be set aside, as if the contract was that there was a growth of Hickory, or Wood on the land. — There was none there.

If A. buys a horse of B. for a sound horse & B. tells all the known defects about him yet proves to be unsound. the case against B. is clear. Now this case against B. states the case in full & then states B's case against B. as to cheating him. —

If a contract

is made under misrepresentations not at sale, but had it been known that they were false the contract would never have been made. Ch. will set it aside. altho' there was here no fraud. In both the parties were of the same impression. The case does not in this state of the law materially vary from the National Ct. It was a sale of goods in Penn. a both parties understood the land good. it was a mistake &c. —

In all cases of sales of personal prop. there is an implied warranty that the vendor has good title. But it is said by some that the vendor would not be liable unless he knew his title to be bad. but this cannot be law, for then in the case of a misrepresentation if he was not liable without scienter; proof of the prop. to raise the implication Cro Jac 474. 1 Show 63. 65. 1 Salk 210. 1 Roll. Rep 103 & 93. Carth 90. 2 Ld Ray 590.

The action lies also for a false affirmation respecting another title the person made, it was not at all intended 1 D. & Ry. 31. 1 Camp. Rep. 28. 2 Wils 307. 4 B. Moore 56. is a contempt the action lies agt. the 1st. Ch. were divided in opinion. — Paynton v. Forman, Bartholomew vs Black. — Contra.

It lies for injuries by any kind of goods as by false tokens, or sale of any kind as the case may be. 1 Sid. 146. 1 Show 165. Carth 503 Ld Ray 590. 1 Com. of Contr.

B.R.P.J.2. 1 Lev 244.

Libel to recd the act will lie for cheating a person by playing with false cards but this is founded upon the laws relative to playing - as in case of any action &c, the Law will not stoop to help either party. C.O.E.J.A. 3 Bl. 165

Observed above that an act on the case will lie in case of fraud as by using false tokens, &c. a remedy may be had also at election of party the act on the ground of the thing not worth. or by waiving the bet. he may bring trover, or by assumpsit may be had. if the horse was sold or if one has had money for a horse, that is as if there was no contr. or as no contr. & may act for the price &c, apt.

The act lies, in case of an individual being injured by the obstruction of some pub. right but the diff. of damage must be stated &c. the owners of an election where a vote the vote, the candidate who considers himself injured by this conduct may bring his act. this however is a strange kind of right but it is now too late to dispute about it. - Seaman or writer in this case may also have his act for the obstruction of his franchise, how in this case when is the injury in many cases 2/3 to 3/4 / &c when the party had a large majority &c was low in the minority 1 Lel 179. 3. Lal 14. Cro R 644. 3 Lev 50.

Libel for general wreck as a man can sue that an act for the interruption of

of the right of toll but now settled by Ld Hale, Parliament. contended that they alone had cognizance of elections & they did decide whether the man had a right to vote or not. 1 Salk 502. 6 Mod 45. 4 Inst 24. they decide if had the right he then might recover damages 1 Wms 192. Cap 20 Hy. 8. Ch. 62. Cap 2 Eliz. 11. 2 Inst 546. the conusance of the Cts in this action does not take away the originations of ancients but guarantied by 9 Ed. 1st. & this Statute gives double damages, in consequence of a false return

And this action in the case will be for a false return of Mandt. against either a Mr. of Corporation, or Supreme Court or Justice of Peace &c &c.

The right which had to the tolls which he wants has been said a question at law very much agitated in the Cts 4 Burr. Which was a question whether the ancient right was guaranteed to him by 9 Ed. 1. & now guaranteed by 2 Eliz. The prevailing opinion of the time was that ancient rights should be maintained as the custom at the time was to apply to Cts of Eq. for an injunction, the Legislature made the Statute giving them a right for 41 years. Then arose the question whether the Ct of equity could interfere or not whether if there was, that remedy was cut off by the Statute. There was the case in Burr. when the then Judge to one decided that there was a Remedy. it went to the House of Lords

Where the Case the 12 Judges were divided 7 to 5
out of 12. that there were 7 Lawyers. If
7 out of 12. divide that there Old were not
of the Law. Now Counsel to satisfied that
there was a Old usage. Sir for it from the
nature of the Judges but if there were
such a right, I cannot see how they Legislature
can take it away. any more than the
a man right to his land, see Bates arguments
(Bro. P. Ca. Hardwicke of the above case)

any distinction
tion Ca charge to an Off. in the execution of
a process will lay a foundation for an ac.
as did Ch. clon his house to protect the goods
of Bankrupt see 1 Bac Ab 508. 5 Bac Ab 7. for
a mans house is his castle only for his own
personal protection

Lu. ex. Where an ac.
ne dic is an author for the publication of an
abridgment of his work / Ld May 709 / Under
this a Spaniard / Dalk 446. / pleaded the object was to
avoid Immense of Labour. — but not if
merely abridged as by quotations.
Lu. If dest Lord writes & publish a translation
in another language? per Bob. & Buller,

As to the form of this action, there is nothing to
be said about it, but as any Bill in your Ct. The
Ecclesiastical may have established a form as to slander
& there is no form for Trover — the Ecclesiastical Courts

Writs Prerogative

Which do not fall under the foregoing title Revd will not in this work the occasion of this title

Mandamus.

Object in the Mandamus is a speedy remedy. Must be the same cause as those for Mandamus & Ejectment but those cases in which we can go to Ct. Chancery is not the proper remedy.

Issues from the Supreme Ct of our county in any state & of the U.S. Superior Ct.

Also is granted in those cases which are some way relate to the Judicial or Government, but you cannot have it against an individual to compell Surrender or deliver up Deeds &c which, But if an officer refuses to do or does not record a deed when it was his duty to do it, then a Mand will lie - but here is no contract in which you can go into Ct & the damages be small in damages which will not answer your purpose for you want the land the deed of which you have & will not record, then writ will give it to you

To Sheriff and the County Ct refuses to try a cause. Fine ten $ application

to the supreme Ct. you may obtain a Mand.
ordering the Ld Ch B to try the cause. K. B. Ch.
Prohibition refused to try — the ground of a wast
of Jurid.
Ld of Mth. — tenders the Ver of 12 Ch. the Ld
Ch may issue a Mand. command the minister
of him / Ld Raym 419. / Vern 176. 3 Bac 562. Bur
1267. 4 Mod 234-2. /

Mandamus shall does not issue
of a Matter of indifference but of some im
portance & public concern

The writ is issued on
Oath of com. might it is not discretionary with the
Ct. to issue or not. But if the writ is issued
it must be issued without motion
upon the imposition of terms

If an individual
suffers from the neglect of an officer of a corporation
to do certain parts of his duty, he may have
a Mand. to compel the performance of the duty.

If a sum of money is due from a county
is not corporate as a County of Ches. he the
Mand. is taken out of the Treasurer of the
County. for no action will lie against the County.
If the Treasurer refuses that he has no money
in the treasury, then the Mand. will be
issued of all the Justices of County directing
to levy & pay / which they are enjoined to do
by law in such case / Ratt. 45 / 1 Bac. 434. 11 Co 94

94. 1 Bl R 211

The Off[r] of a corporation is as much liable as any of the Off[rs]. But this will not be the case with the Off[rs] of a society or voluntary association 2 Salk 175. If the man does not do his duty he will be liable upon his contr[t]. but not to the mand[s]. 1 Wils 11. 4 Bl R 125. Doug 506.

Proceedings

How the Clerk would not record Jd. deed. say I can't tell me good for nothing. — How he the D[t] can specifically sue by a writ of Assist. how so Jd. goes before the Ld. with proper affidavits & with his own affidavit of the facts. — that he did not present a Bill to the Husband & the summons the issue comm[d]. Clerk to appear before the Ld. & give reason why he has not or give some satisfactory reason. will he come & give no satisfactory reason, as he has Jd. was going to deal somebody. upon this the Ld. fines a pecuniary penalty Assist. to record the deed within a given time

But now suppose he returns that no such deed has ever been presented. — This was conclusive, for there are conflicting facts. — How goes it to the jury & at law the case is tried by them. How far the jury shall believe the Sheriff or believe the Jd. they will give damages, & there were a pecuniary punishments. —

By a Ld of Parliament the Sheriff is permitted to traverse the full return of the writ & he never had the deed, the jury & then summon

summond &c. The first further proceeds are
same in some of the States similar mode of proceeding
by virtue of a similar Statute —
Ex parte Sly. 1 Bl. 111. 3 Burr. 1361. 1 Bl. R. 147.
In case the Sheriff is not in person the writ
for a Mand. may be made to one of the Justices.

If he first makes no return to the summons of the
Ct. the Ct will issue an Attachment against him &
they will also issue a Peremptory
Mand., But if he does make return & that
is insuff. as he does it all in point of fact,
upon the face of the Ret, the proceeding
But if his reasons in support the Ret will issue
a Peremptory Mand., & the Ct is bound by
the return. So if the return is conclusive the
Ct will trie an issue for a false return
for this purpose the Mand will be issued, thereby
proceeding in common the Ct of whom was made
giving both Parties the chance of attending on
the spot: a jury then will be called in, & the
case settled at once — In some of the States no Issue is
necessary 1 Salk 699. 1 Str. 55. 1 Vent. 111. 3 Mod. 415.

If the application is against several, as of the Justices
Selectmen of the Town in town of whom refuse
to give the certificate of a man's being a freeman
1 Ld Raym. 581. 1 Salk. 191. The Mand. goes not against
military officers but against the Town to reinstate 3 Burr. 1547.

If there nothing make a return of a writ it is false, as there were then writs out against it is true there it may be true, or either one or all three for it is in the nature of a tort.

The Court is clear, if there it is not complied with, it is a contempt, an attachment will issue against the party & they may be committed & gaol. till they perform the Mandamus.

But in case of a corporation where the 1 Lill 470, 1 Ro 606 / majority rule, the attachment will issue against the respondeat only, see Lil 140.

Writ of Prohibition

There is a writ which also issues from the Exchequer Ch. or a Judge from any of the Courts of the Chief Halls

4 Bac. 246.

The object of the Writ is to prevent an inferior Ct from proceeding in a cause not within their jurisdiction, or also if they proceed in an illegal manner. / 3 Bl. 111. / and to the intended certain practice & Coll / 4 Bac 240 / to prevent / 12 Geo. 3. / Where a Surrogate etc & Executor / 4 Com 487 / a Prohibition may issue in this case & issues / 4 Bac 100.

This writ issues may issue not only against the Ct, against whom it issues but also against the party in the suit cause.

The Ct of attains the

-ey, or, of attains & Chancery & the matter of the

Motte the case & claims that the Ct below has no jurisdiction & the may apply upon the face of the proceedings. & it may not, if it does so after. & person to the writ will issue at once but if it does not so appear but the matter of jurisdiction depends upon some

Vaux's Notes 1183 / it does not appear upon the record. then affidavits are required / the record of the Ct below is brought up / & the proceedings & matter can be set & the cause why & writ of Prohibition is not to be issued. If they also suffer cause that is an end of it / not a peremptory writ will issue

upon - 1 Bl Rep 495. 1 Salk 549. Ld Ray 211. Hobart 57. Ld. Ray 220.

The writ prohibits the Ct to hold plea of the cause, & the Plff in the orig suit proceed in the cause

In Eng it is often a question whether the Ct have juris or not. The motive of proceed in such cases is, the Plff by bringing a fictitious suit before the Lieut Ct in which the story is told, the Plff for Prohibition is Plff here. The declaration in Prohibition is called. & the defendt appears & pleads that a Prohibition has issued from Ct above & notwithstanding this the Ct below proceeded not regarding the Prohibition, the declaration is upon the orig cause & not upon any new matter. 3 Bac Abr 114. 4 Com. 570. Hardr 479. Ld Ray 1408. & the Plff proceeds a peremptory Prohibition issues & defendt pays costs & nominal damages. If he does not proceed a Mandt issues to proceed or a Writ of Consultation issues. 8 Mod 136. 1 Lev 125. 4 Mod 154.

The commencement of any other action for the same cause before the same Ct will be a contempt. & the Ct will back Plff below in gaol till he is satisfied & pays the costs &c. Cro Eliz 557. 4 Bac Abr 62. 1 Vent 348. 2 Lev. 360. Hardr 495.

It is a qu. nec. whether this writ is one which the party may require as of right, the better opinion is that it is not, but is discretionary with the Ct. 8 Rep. 4. 1 Lev 65. Salk 199. 2 Ray 420. 578. 586.

The writ of Consultation is sometimes issued when a Prohibition has been previously issued: viz when the Plff below files a dec: agst the ~~of the~~ def: ~~above~~ below i.e. the Plff above) & proves the suggestion, traverses the fact upon which the Prohibn is founded 8 Bl 114. 4 Com 51. 3 Bac 462. Bl Ch. 25. 2 Bl 469.

So also the Court on mere motion may of itself do the same thing & issue a writ of Consultn

Audita Querela.

The Audita Querela is a writ ~~writ~~ to enquire in case of a recovery being entered by default, & after an process has no day in Ct. & he has a sufficient defence agt it. — 2 Ab. 73 Bro. Tits. out recovery 58. 4 Ed. 3. 12. 2 Ed. 3. 12. 2 Ed. 3. 12. 2 Ed. 3. 12.

The proceedings to make application to some officer or Judge, the law says a party, that the Judge shuts the door to him, the Judge will issue an audita querela, which is a writ in the nature of a supersedeas to stay proceedings & respond all the damages & may be sustained for the audita querela, if an unsuccessful suit —, & when it is granted it is a supersedeas of all the prior proceedings & if the officer has taken in part he must restore it & the party is attached it must be returned — the whole evidence of debt in the writ of Aud. Qu. is upon the kind of security of the bond, quantum then & different from damages, &c. And if he fails the penalty of debt must be upon the bond. If the Plaintiff shall in recovering judgt. Bro. 82 R

It may be the case that may pay and yet have judgt. for debt has been paid & B. the judgt. has been rendered agt D., B. may sue out a Scire facias & may have the Aud. Querela & judgt. and every one has had agt the offr. the pt. pays

p[laint]ff. cannot proceed into another Ct as they had
a right to do, but the Defendt. must pay the
whole damage as if the [illegible] Ct had held
d[amage]s. / Com. Jones 378 / may have been and pay
as he has suffered expence as well as the Plff. you
only he has no day in Ct.

The same after Judg-
ment - which relates to every thing as does this
writ.

Access B. to Litigation - B. Pl. It comes to
settle with D. if D. does it, this note is in the hands
of Pltff but D. discharges it, the Pltff then sh
negligence must bear note & obtains judgt. the
Defendt. Lies as the judgt. obtained & misused Pltff.
Pltff. cestuil que use and quere Rolles
Abd 413

It is quere, who shd grant the audita
querela, Att's practice of Eng for the Ct of
Ch of B. B. to do it & to alone, does it - this
is the practice in Connecticut, what it is in
the neighbouring State I cannot tell. I cannot
discover why any more shd not after than before
the Power of Attorney ceases - Bacon Abr. Ju.

This Writ is
given in all cases in w.ch something has happened
after judgt. by w.ch the exn. shd be restrained.

Pltff. recovers in his writ damages all the dam-
ages he would recover in an Act on the case,

The bond of security given on application for this writ cannot be charged - but is entirely forfeited in case of failure in substantiating the facts on which the writ is founded

See 3 Bl 404. 1 Chit Bl. Stud. Quest. As to its being a supersedeas. id. 1 Salk 92. Bartt 278. 9.

Quo Warranto.

The case where a person is in possession, or claim of some franchise or right, & contends that the person has no such right. Remedy - the information called a writ of "Quo warranto" or in case of a city, against the officer of a corporation, by another disputing his election.

In this country as to rights & franchises or Ferries, Mills or certain shares &c as long as the mill keeps there &c, in case of a non-user of this right & removing the writ will the quo war.° do you there, 9 Co 25. Yelv 191. 2 Roll 205. Hob 116. 299. Car. Ch 527. 544. 561. 2d Ray 1559. 3 Dac 262.

Of the franchise of a whole corporation, the head or any three of them corporate names, 12 Rep 86. 2 Roll 115. pl 8 & admitting persons into the charters of the city or city officers. 1 Roll 374. 1 Show 264. Hob 247. 2 Rep 869. 2 Roll 115. causes the deft of their franchise -

The antient writ of Quo War.° has given place to Informations in the nature of writs Quo War.°, wherein the proceed.gs have been shortened 3 Dac 263. Ca. Ch. 297 &c.

The mode of proceed.g is for the Att.y to obtain a rule of the Court why an inform.° &c, not to be exhibited, why deft is convicted pledge of matters and said against him, & the old law is now used for

for the same patron, now it is Cust dominus. 3 Mc 262. 3. If pltf goes agt. Sheff, he stops the court. - Grant void 1 Show. 276.

So this act^n deft is bound to shew a good title himself & pltf. or judgt. will go agt. him, But on the contra the pltf must recover upon the strength of his own title & not on the weakness of the defts. 2 Ld 701. 4 Burr 2 1465. 6.

And deft. shall not oust his title at any time & conclude with a gen^l traverse of the matters charged &c. 2 Ld 701. Gilb. Ejct. 146.
Ch for 47 pl. 3 Mc 262. 1 Bac Ab Abus trav.^s 2 Ld Ray 11. 61.

Habeas Corpus.

The Writ is given in a variety of cases, & it will not have no coram in this county, see Hawk. P.C. 129, 130.

Habeas corpus ad subjiciendum &c. directed to the sheriff of the county, & he returns that he has the body of the party & brings him up to render his testimony.

And here it has been made a question whether the sheriff would be liable for an escape of the prisoner, in case he had him under such writ, & was found by the twelve Judges that no action would lie against the sheriff, but shortly afterwards we find the reverse, & it was made treason in assisting the sheriff. The question is an important one for it is as the Judges can have no effect upon us, — the practice of the courts stands all upon the same ground.

Hab. corp. ad subjiciendum

The writ is issued by the judges & directed to the person detaining the party, & by their writ is carried with the person as a matter of course, for if it was made returnable at the day of the party to the Court it can have no effect upon us, — such a doctrine, — & the Statute of 31 added nothing to the Common Law, & then during the term

3 Bl 131 & Ita writ is a writ in the county as in Eng. and the Ct of Com. as only in absence of the C.P. and all the Ct of Eng. were in session at the time of the emigration your master are now to inform us as P.C.

The object of H.C. is to bring a person of a man before a Ct, containing of the cause of imprisonment, & the imprisoner in that place; that he admitted to bail, & was & bail the prisoner as right;

Objects to the person having the imprisonment, as well to private as public cases. so of a child & idiot &c may be brot up on H.C. as well as a man sane & sound 2 Lw 129. 2 Ita 332.

The writ is issued from the Superior Courts & may be granted either in vacation or term time by application to the Justices 3 Bl 131. or a Judge

It is a writ of right, demandable as of right, but it is not demandable when one is imprisoned upon execution 2 Inst 52. or conviction 4 Bl 132.

In St Bar it seems there is a provision, that application can be made to Justice of the Ct in vacation time,

The business of the Ct seems is to discharge the man from prison, admit him to bail or remand him. - No ground for committing to discharge him if valid time specified / Bole 143/ 61

out on bail by mill bail Lim. or of there
cases of commitment by mile Com and Lim

Prisoners of War are not subjects of the writ
because they are not subjects of the nation

Ex. Com the
subject of a neutral power to take advantage of
it /see 2 Burr. 765./ — those are not subjects, neither
are they enemies? They cannot a

If the H.C. is ground to stay ab
initio charged with a crime the motion for
the writ must be refused & writing altho the
Ct is in session, — On this case it goes out
under the direction of the Ct, if it issues
during vacation time & /2 Salk. 350/ signed
by the Justice to whom the application is made
It is directed to the person who holds prisoner &c
cited by /2 Burr. 765/ & if sufficient to try
up the person with the cause of commitment
& he must also sign & seal or he was
committed. If no action is made /2 Burr
149./ an alias & a plurie will issue
issues. If prisoner is sentenced out of the
State /Burr 3./ to which he belongs, cannot be
but only by authority of his own State, for
there is no way of punishing the refusal to obey
it, but by attachment. If writ cant be issued
out of the State it will show there is authority
— Ex Mass Case are all over the whole country
in State it stands, & that writ may be issued out of

a Rex case — cases, Ex parte Hall Com taken on Exam of a Prisoner Prisoner taken
as a Prisoner of War — Ex parte Milligan Prisoner detained after Peace declared
Ex parte Merryman Prisoner detained after Rebellion Broke out Com on Habeas Corpus

If a reasonable cause is shewn the Court will discharge — & the Defendant will be entitled to his costs, for the Ct. cannot if for good cause is shewn by the prisoner that he has his remedy only by action for false imprisonment. — But if the return is not reasonable he will be discharged. 1 Salk. 347. 1 Vaughan Rep. 150.

If reasonable cause has been shewn & not controverted in such case the evidence may be made as that shewn was considered as a reasonable cause. But the Defendant is entitled to such as he has offered since he has been in gaol — as if the old case he was not entitled to after commitment. 1 Lil. 478. 5 Mod 29.

If a man was committed for an assault above a year & a Judge of the B.R. did not go. But if the Judge was of the Circuit & an Information filed in the B.R. while 30 Days 994 for he was no case to continue

If a man claiming a right to the person of another person may bring the writ as a Guardian for his ward a Father for the recovery of his child, as the case of an Uncle demanding the same. 2 Hawk 129 & Rd. Reg 1054. 2 Hawk 982. If a stranger a Person.

Even a young Lady was decoyed by Father misrepresenting the Decoyer brings to B.R. the

1 Burr 606 / Ld Mansfield dec. ye order at Council
the being of age. / 2 Atk 136. Ld Barn 1 Burr 571. /
Wife run away from Husd. Dr & Husd sue
before Ecc Ct. on Articles. Husd by Lawyer
advised her to sue for order of Ecc Ct. for
restoring the Husd not to molest her. Ld
Ch Justice Hardwicke Lawful for contempt

If upon application the Person shall [illegible] / 1 Burr
431. / & by wh petition to take the opinion
of the Ct. if upon application any person whatever
even of the King himself. 3 Atk 131.-

If upon proving from
B.R. By V. ath sufficient Ob, and from one Witness
Ob,

It was made a Q, whether the writ shd be
issued any more after 1 year elapsed. / 3 Atk 132 /
It seems to have been the opinion that at
the time of the application to Nottingham Chan.r
he shd have granted it - but he said he wd do
it if he cd find a precedent. but no other
wise, he found none, & did not issue / 3 Atk 132-5.
1 Vent 100. / Wms Rep issue / ch. 346. Ld Mayo 586. /

But it may be issued in Ecclesiastical cases
2 Lev 125. Show 382.

How shd for cases of 2d Writ see Bldg 153
12 Mod. 166.

That Act Amendment &c. & enacts &c
Burr 431.

Powers of Chancery.

Courts of Law & Equity cannot exercise all the powers that are given to Courts of Chy in their decisions & the distinction between these Courts & those of Law.

When the Courts of Law were first established they were governed by very strict rules. But these rules are now relaxed & they are more in their regulations. - The strict rules of the Law once governed them. It was said the Chy. had cognizance only of Frauds, accidents, & Trusts. But Courts of Law have cognizance here in all these cases.

Courts of Chy are bound by precedents as much as Courts of Law.

The difference between Courts of Law in this, that Chy affords effectual relief where Courts of Law give only damages. Relief cannot be had at Law when it cannot be had at Chy, they differ too in their proof & mode of trial. They differ very in the mode of trial it being by the Court in Chy without juries.

3d Difference. There are certain cases of Courts of Chy which are constitutional, that is - they differ between Courts in the mode of the execution of their rules. (as more certain Courts more.) Contract made with young heirs are set aside from their ancestors. Courts of Chy if they do commit, it will set them aside. Courts of Law have not gone so far. - Courts of Chy go

this mortgage they paid Defendant a sum of Pltf's, in case of arrest. - Pltf's creditors sue for the amount due Defendt. Suit does not go off for. Pltf's young Lady was accosted & the whole countenance of affairs till she saw the men engaged in the thing, then let the young man know that her daughter's estate was worth 15 & she did not expect to account, & if he did not enter into a contract he not to allege. Let the Defendt take off the matter. - Hyp. now moved, Bill for relief, after Judgt in Pltf's Suit & Execution on the ground of fear of injury - equal & exact in the eye of Chancery

In when a part of a contract is against sound policy, the entire Contract will give relief, but the rule of law cannot. Pltf's suit not on the ground of making contracts for public but men going enforcing a speculative policy - it was on the ground that Pltf's first thousand pound bond - & suit after the equity of redemption, ~~belong~~ beyond the day assigned for the payment a forfeiture of the mortgage, it is against sound policy to allow a man - to sell property worth 15 5000 for $1000.

The rule of law as to Pltf's as governed by the same principle, Pltf's however goes further than the rule of law in the application of the rules & principles

Pltf pays & therefore relief at. Law does not. Pltf does it only when damages can be recovered at law

but the relief there is not adequate. Thus Ch^y will not decree specific relief in all cases in wh Law gives damages, for those damages may be an adequate relief.

Ch^y will allow a intervening person to give testimony, but Ch^y gives the same weight to the testimony that the Ct of Law do, but in all actions at Law & in eq^y.

There are certain maxims wh^h govern in Ch^y of Ch^y & if a case interfere with either these can be relief at in Ch^y — The first is, that when there is an adequate remedy at Law the pl^ff can demand relief in Ch^y But to this there is an exception, viz. Whenever the opposite party may set his relief in Ch^y tho' a complete remedy may be had at Law.

2^d Wherever real Law exists must be equity of the same nature to be pursued in the Ct of the pl^ff before the contr. can be carried into effect. Thus if the duty of pl^ff cannot be done till def^t has done his part in such case pl^ff must agree with the Ct to do this as soon as possible

The maxim this does not mean that a man shall in all cases do what he ought to do before he can come into Ch^y but all it means with the above qualification

3^d Falsification is made 3^d

a specific relief the Ct will controll A&B to do the
part, in common justice he ought to do

4th Where A&B. rescind a contt it will place the
parties in the same situation, as were before the
contt. as A found B. had fraudulently assisted him
till he found him out, & then insisted upon
carrying into Execution. & then insisted upon
carrying into Execution. & then insisted upon
the pain. & makes the contract (to such one of
good) become the part carry the affairs A&B
to second. Ct will not do it rate as the part did
take not as he pursued him

5th Ct will rescind where the contract pains
are not efficient, But in such cases it leaves the
parts to be remedy at law, If it has been but short
a little, Ct will not, in a Godfrey case, as
Grove applies for a decree to rescind a contt. Ct
will not do it, as he was cheated but a little

6th Ct will not decree a contt w. was not originally mutual,

But it is of no consequence how for from being
mutual the contt may now be, but if it was
originally mutual the Court will be decreed to be
performed as Ct. Cha. B ~~was~~ 1000 a a annuity, as
B's life. if B. die first such Ct will decree
the performance of the contt. the money must be
paid to B's Ex.

7th In cases of voluntary contract Ct will

not mean Lordship" - it means "I beg leave to
make some observation" - for if it did it would be
giving more than adequate damages as at law
in case a contt only nominal damages could
be recovered, if the contt was rescinded relief would be given.

If one takes advantage of another in consequence 8th
of his situation, Ct will give relief, tho' Law cannot
as if P. finds D wants Vase to a good bargain from
him, Law give no remedy. Ct will, as also the
Ct will not make Deft by the influence of defts
D should not but it and give relief in the case above
The principle is the same in both cases.
So also in case of an bargain they obtain from a Minor
to his great disadvantage

Ct does not interfere where a personal remedy 9th
because there is an adequate remedy at Law
a contt to deliver Corn, Ct will recover the damages &
then with that money buy another Corn
But there are cases of personal nature in which
Ct will interfere as where family pictures are
demanded, & tho Ct will do in all cases where
the damages are not an adequate relief

It has been said, & disputed that Ct engages in their effect
& contts with the Law will not. But this proposition
is very subject in its point to settle down into
point of the province of Ct with to what & concerns
& no relief can & had at Law

Judges of C.P. & at Law are mistaken Law & are for the same cases in the other Ct.

Ch. will strike a ballance between the respective claims of pltff & deft. i.e. provided one of the parties is not a bankrupt. If he is not the case, Clearly is at Law.

10th " One a mortg. always a mortgage, & was he discovered that great oppression arose out of the mortgage but as it was a security they to borrow money & also secure it with land they pressed the bargain to forfeit the forfeiture exacted and in the sanction of the Ct., they always retaining it as a mortgage when the reason ceased then had long been current at Law. & so also by the adoption of the maxim. It would be impossible for a man to make such a contract as to be forfeited without the sanction of the Ct. & thus to put an absolute bar to all the avenues of oppression.

11th " What is agreed to be done is considered as done, &c. A contracts to convey Lds to B on 1st Nov. 1850. In the meantime B dies now who owns the estate? the estate of B? Yes. altho' legal title, but Ct will compell the Lds to convey. - Who entitled to the money if B had made his will the land would have passed & the money all my real estate. - R.D.B. 391.

Ct will give relief in all cases when the mere

decree generous contr. or a bad bargain. Nor there was nothing sufficiently unjust to induce the Ct to rescind. —

In case the Ct decree cannot be carried into effect, (as when D. contracts to convey to B. at a given time & never does) the Ct may decree it to be done. — Here B. will be secure in the legal title he cannot be compelled to convey back. + Then the Ct will order D. to convey the prop. to B, and this will be well enough if the conveyance the Ct. but to compel the D. into Ct. under a penalty not is adequate damage in favor of B., and this is not contra the max. that a man shall not be compelled to do an act not in his power; for there the impossibility arose from D's act. and the impossibility arises from the act of God or Legislature & the penalty would not have been imposed. This rule applies in all cases of trusts. —

The penalty is not by the way of punishment for Ct, nor punishes a man — It is merely adequate damages Rd R 386. See Dest Ch 40. —

If the performance of the contract cannot be had by the party in consequence of the intervention of some act, made subsequent to the making of the contract, then Ct will order an issue to be framed & tried by a jury in case of a contract with a Bishop to lease Church lands. See 30. Unless the act was done by the party and the Ct is to make it to his use for

the last year. that time required by the Statute. Time in such case was originally of the essence of the contract in Equity as well as at Law. The Statute of Limitations allows a case for 20 years. After the Statute allows a case for 20 years how can we ever have any Statute of Limitations in Equity but the Statute never can bar a case at Law.

If a contract is made in the alternative to build a house or build & pay a sum of money, Law would oblige the party to build the house or pay the money, but the party may elect to build the house or pay the money, but the party may be accounted at Law as the failure to build.

But if the money mentioned in the contract was meant as a penalty to enforce the contract, to build, in such case the party will decree specific performance.

Whether the contract to pay the money or failure of performance of the collateral act was as a consideration or a penalty may be inferred from the penalty itself in some cases. in others it must be drawn from other evidence, & when this can be found there would a case for equity.

In case of a man who dies before he conveys as he ought what was agreed to be done — In case of an agreement to sell land & he dies the Executors may the Vendee is entitled to his money. But if in this case he made his will & died before the conveyance this land will pass by the clause all my land.

In cases of articles of agreements as to marriage settlements the land agreed to be conveyed is treated as money — So if money of the wife agreed to be laid out in land & the wife she dies the husband will have the money & the

country, but if in the country can the wife and not take her dower in the money of Chancery. This moves the equity of the law, & Comm. law gives the wife her dower in this case, Law cases 2d point noted above 2 Bro 83. 112. 136. 248. 1 Ves. 438. 61. 710. 3 Ves 224. 415. Pr Ch 397. 1 Vern 389. 1 Atk 542. 2 Ves. 56. 79. 132. 68. 11 Mod 468.

If contract of marriage will be enforced tho' circumstances afterwards render it unequal. case of the annuity to Dee. Now if this there is an exception, as when there is nothing but money in question & there is an adequate remedy at law. This case must be tried at Law. viz. If one of the parties has a right to go to chan. for his relief the other may also go there for his relief & chan. go to compell B. to pay. & also B may go there to compell A. to pay the money 2 Bro 412 415. This is the only exception Pr Ch 157. 2 Bro 132. 218

Statute of Frauds &c.

This is a difficult subject. Yet it the cases are irreconcilable, but Mr Justice Dean made it as clear as legal may.

Now what are the principles on which a Court will decree a specific Perf. of agreemt. & thus take it out of the L. & P.?

It is agreed that if the agreemt. is to be proved by writing the writing must be the agreemt. made. It cannot be introduced for evidence cannot be admitted

1a

[illegible] to prove the [illegible] the amt of the [illegible] that when there is an agreemt. [illegible] the agreemt. [illegible] 6th

in Ch which is inadmissable at Law. This shows the object of the St. that it is to evade the introduction of parol testimony of agreements after a lapse of time. Where a Payment fraud & perjury
1st to avoid if you can prove the contr. & notwithstanding any other means Statute existing, they not that contr. in such case be enforced? I believe this is the true principle the intention of the Legislature authority the contr. but enforced & fulfilled, and in the St. of Lds relief, I believe this will be found to govern all the cases.

It has been contended so far as that, where the def. confessed out of doors that he made the agreement the Pl. had been bound & still but this is going too far, on the right side.—

2d There is another point in
2d cases may arise & may be admitted as a subsidiary to Pl. If the def. was to cheat the Pl. by the non fulfillment of the agreement. As if Pl. build a house & an agreement that def. should give him a lease. after the house is built Pl. may enforce the contr. but he could not enforce if the house was not built.— This fraud may be proved & part as all fraud must be proved. By this legal evidence the Pl. avers as the fact of this law & then a parol agreement. Has Pl. will enforce it, The Rule then is that whenever one man attempts to derive an advantage from the parol agreement — or to, over Statute that of writing & the contr. he shall not be allowed to do it — This is the principle for the Statute. 2 Vern 454. 456, 2 Show 283, 1 Atk 12. Pr. Ch 519, 2 Vern 266. So these are Statute Law as other Statutes

Doctrine of fraud. In the case above there was an agreement & bind the case. Now suppose there was no such agreement but a Bill had been laid out large sums on the strength of the parol agreement. Now here ought not the Court to enforce the agreement on the ground of fraud. This is the case in Equity. which is Doctrine of fraud. 2 Ld Raym 1079. 379. But surely if the fraud is the principle, here the Statute not to be allowed to be pleaded. — For the fraud is as great when the witnesses were not called for & the time of the 17 Car. 5th contract as when they are

Another sort of cases. In which money has been paid 3?
upon the agreement either a part or the whole. And in such cases. the agreements have sometimes been enforced & in some cases, not. — It is said because the agreement is part executed, — i.e. such the fraud arises. & the case in 1 Ch Ca 300. 2 Eq Ca Ab 46. Lifford 22. Ch. Co. does not allow the Bill, on the ground of the Statute was not suffic. &. Deft was allowed to avail himself of the Statute, For the following cases. it was held that the agreement was 1 Vern 472. 3 Atk 1. 4 Eq 720. & many such cases out of which how you are on Doctrine of fraud. How if fraud is the ground why then the first case ought, & this ought to allow. The Statute will deserve the contrary when the case is discovered. But then there are cases in which the fraud cannot be discovered. So that fraud does not govern in all cases. as will be the following cases.

& defts cover into Ct Equity to enable the agnt
But the Ct will not allege Lem to fulfille, Lem
no fraud is laid but his refusal to fulfille he agreem
but the Ct. views a forfeiture & this on the ground
that the act endeavors not agreed to forfeit the
contract. 2 Ves Ch. 208. 3 Atk. 394. 2 Atk. 155. 3 Atk. 382. - This is Atkins
& Atk 663. 2 Bro Ch 563, 565. 4 Dez 23. 6 Dez 37. All these
latter cases are cited to overthrow the former
doctrine & of the former an agnt alone is wanting & therefore the Ct will enforce
Qu. Which of these is the correct one? This admit
the Gall that of defts admits & agnt & does not
insist upon the 2d & the agnt shall be enforced.
& to Calvert say that the act agnt is void if
this is the case Equity can not enforce this
void contract. 4 Dez 99, 548. But Chancellor say in 4 Dez
that Equity will enforce agnt executed tho arising
since at the suit of the agnt without the danger
of fraud & perjury. but whether the agnt is void or not
makes no diff as to the validity of the evidence
agnt & a practice of Ct's & put the parties
upon their oaths. Now this practice must agree
with if they do not enforce the contract they enforce
2 Bro Ch 566, which & Gods Equity and no Ch 655 & Thurlow
says that where an agnt can be proved without
evidence aliunde. that is to the time of the instr.
there the agreement shall be enforced.

There two opinions are, & this case with Devie
agnt & the defts admits the contract does not insist upon
the 2d of 3 & 4 Wm & a Law be found & it, but if he
insist-

insists upon that Pl. he shall be aided by ct. as to that point they diverge

Where possession has been delivered under a parol agreemt. & the D.ts will decree a specific performance. As A. puts B. in possn. & pays D. afterwards sells to C. there the delivery of possn. is evid.e of an agreemt. / 1 Vern 365 / that rent is to be paid is evidence of a sale, there in this case D.ff has a right to prove the agreemt. for B. to 365 / to avoid his liability as a trustee. So that the evidence of the legal — on this point, to be one of strictly contradictory; the case in 1 Vern. I believe to be law, & the point is that if after there was a contt. & this is ascertained without an appeal to evidence of the terms of the contt.

and this point that the agreemt can be ascertained without appeal to witnesses as to terms of the contt. tho' the case out of the ct. I believe is the govg. principle, & it runs thro' all the cases. Now were there no other cases than those of paid & unacknowledge that. & the governing point. But this is not so, there are many evidt. of the contt. drawn not from dirt. evidence of the terms of the agreemt. but from the face of the agreemt. in favor of the plaintiff.

And so in the case where a man admits the agreemt in Ct. & is entitled to enter & an appeal to his conscience, and also when money has been paid, if he again calls for his money he must prove the agreemt to get at the money again. & when the agreemt is proved the Ct decree a specific performance, Paid there case you receive the money, principle cases. 2 Atk

Pond v. M. 65.

Again we compare the proceedings, as we did
Dow Rep. 63. How it could that Parol evidence
not be admitted to subvert a deed. But it is now allowed
that Parol evidence of facts which may go to prove the
deed void / Talbot. Ca. 60. / may be admitted, as in case
of an absolute deed being given as a mortgage. It
may prove the facts. that L. has remained in Poss-
ession since the deed was given, has paid no rent, and
it is B. because he owned B a debt, but he does not take
a conv. but B. mortgages now holds the note. Now this
note A. has paid the annual interest. Now on the
proof of these facts prove that the deed was doubtless
given as a mortgage: & this does not violate the spirit
of the rule the Court will not admit
it for the rule is made against the frailty
of the memory of man, — facts cannot lie. —

Adm. A.
made B. he agrees to sell his lands B. gave A. the
deed of the land that he might give the title as the
rebellion difficulty. B played the rascall. Sale
was set in Ch. Baltimore held that he had a
power of Attn from A. to sell the land, in pursuance to
the same did sell — this was admitted as evidence of
the B was but trustee. The case was decided in Ch.

Adm. A. was appointed to purchase as agent for testator
and in his own name — certain facts were proved
upon wh it followed that he was appointed as the
purchaser the land for testr — these decisions was
allowed & the suit dismissed —

If after the contract is entered into, the Ch. will not decree a specific performance of it appears that Vendors title is suspicious, but if it should turn out a decree of Ch. does not give a title.

Ch. will not decree specific performance as to personal property because there is an adequate remedy at law. The rule are case in ch. Ch. will decree specific performance 6 Ves 671, 2 Ed 355. Pond 6. 217. / case of bank stocks 2 Ed Ch. / 2 Pow 39 /

If the contract is a bad bargain but not attended with fraud so that the contract can be rescinded, Ch. will not decree specific performance but will leave the party to his remedy at law. -

So too where the agent has been a length of time, & the mind from a dormant state, & in this case no other circumstance than the length of time / 4 Pow Cont 960. / from this it is presumed the contract has been thrown up.

Ch. protects the assignments of negotiable instruments, the idea is that the assignee in this case obtains no legal title in assignee & could not be considered a crime thus to transfer it but a breach of maintenance. But here Ch. will allow assignee now to allow the name of assignor / 2 Ed 7 / for a suit on the contract to recover the money.

Bond Bailee give Bailor a release, & then Bailor the Ch. must leave his money; but Ch. protects & in this case if he can't recover the money of B. he shall of A. - so did A.

A. knowing of the bond to pay the money & A. the
said Co bankrupt. B. demands of A. to pay again, & sue
in Ch.y. how only in the case did not B. recover
to support Ld M. on the case at law. She answers
in the Affirm, & has been for 30 years. Now difficulty
arises from it, And it is a rule of law, that where an
injury arising from the fault or neglect of another
hereto suffers may have no remedy at law, & Ch.y
of Westminster Hall is gradually eclipsing the rigid principles
of the Ch.y. I doubt not, but also this equitable construc-
tion into Ct. the assumpsit at law will be allowed.

It is a
rule of evidence that the best evidence of the case
which admit of, must be always produced. Now in
case of a bond to pay debt. The recital is but upon
it, here has been neglect & 30 years expired in con-
sequence of the technical difficulty that where a
bond to be delivered upon performance must be made
but then may commence to sue. Now performance must be
proved, but now the bond is delivered & we is allowed
at law to prove the contents of the bond, Dl 368.

Ob. One of the Joint obligors pays the whole
bond as he was able to do & indeed had a right to do
to prevent a lawsuit, Now here Mrs. A has a claim
of B. for his proportion of share. Here agt. it has been
objected to Ch.y but why, no this? surely there
was money laid out & expended for the use of B. it
certainly raises the implied assumpsit - This is to be
in Ct. the opinion no difficulty from it.

Obs^n. One of the Partners dies, — the Law here is, that if both were living they must sue the survivor but if one is dead they must sue the survivor, & the Executor of the Dec^d settle accounts.

But now as upon the Survivor & Executor. & the Dec^d. owed a sum of Money to Sir Thos Gibbs for his Testator. was killed, Sir Chas must be attended to. as the Law refused to sustain the action from the tortious difficulty that of the Sheriff had gone out of Execution & no go out of his body Restored, but this cant be the tenor of the execution of the Execution, but here there is no other difficulty & this is not enough to save the action in many Instances of Law will not sustain the action — a sum of money will alone is required. —

Although we find no difficulty in point between the Executor of Law & Equity the difficulty arises when it shall appear by the inventory in which the Executor of this Law gives himself Assets of Law, There are some cases where Chancery proceeds upon Equity & the court of Exchequer will give relief where the Law does not give any. We have an Equitable

Mortgage

made that of the — a court to make or do a certain act it is frequently done Chancery does it as if the act was done. As A. covenants among other things to Convey Blackacre to B. & B. pays the money

B. 1 Sir this term is an Equitable, & proves one of the — or Executors of James to an estate to B. for life & on his death to his heirs for ever. &c. what estate is Given, — it is an estate to B in Fee. Most merely by

meaning of the Lien as at first seems to be the case
the word "Lien" has a restrictive [illegible] 5 Ves. 406.
Since the passage from that the word "Lien" "Lien of
Law" he does not convey an estate to any particular person
but merely denotes what estate is conveyed, either
in fee or in tail, — If an estate in fee is given to
A & his sons, the "sons" take [illegible] [illegible] [illegible]
this of given by the terms "Lien" he takes only at
the death of A [illegible] Granted Lattice to be
Lien, — The word "Lien" alone conveys [illegible]
conveys a fee simple. — If the word is that of an
estate is given as above the first taker take
the whole estate; otherwise there will be a divis-
ity, as A shall take an estate for life & after that
an estate in fee — Shown come to the quest.-

Would such a security contd. be carried into
execution at Law, On the case above where the conveyance
is made to A for life & after to his sons. Will A
then consider it a fee simple. But if there
is but a covt. to convey in this way. Will A give
A but an estate for life & then gives the remain-
der to A sons persons who shall happen to be the
Lien of grantee, the Law construes this different
see Reeve. 2 R. 406. & the Ct. endeavours accordg. to the obvious
intention of parties; it is obvious from the face
of the covt. that the conveyance was to A. for life only
The amount of this is what is done in the case
conveyance a fee simple to the grantee. That ought to
be done, convey the fee simple to the Lien of grantee,

the construction of Wills & Deeds &c as well as in the case of Wills, so in that case intention of Testator will in all cases when that intention does not conflict with the rules of Law, here the intention of the grantor is apparent, it is lawful, — But in the construction of this maxim it is not intended so as to declare illegal those devices not be not usual in the strict technical terms, — the language does not at all regard, if the intention is apparent.

The may [illegible] that Husb[d] & wife are but one person the person of many things at Law at Eq[y] now allow to be done. & by the Law of it, A feme cov[t] cannot hold a separate property but now she may through the interposition of Eq[y] & if her Husb[d] invade that property she may have relief in Eq[y] through the interposition of the Courts or if there are more than one in her own name. — In consequence of the maxim the Husb[d] could not contract with his wife, this will was avoided by means of a Trustee, so he did give the property to B.B. & Husb[d] convey to B.B. with out which could not complete the conveyance that is absolutely clear by the Law, but it must be considered as an intended to be allowed, in such case

Eq[y] will also compell the Husb[d] to pay the money to his wife out of his property & the Husb[d] argument for his maintenance and also to enforce agreement to live separate but on this case however there are conflicting opinions & great men have differ, the Husb[d] agreed to pay her

2 Atk. 295. 3 Mo Ch. 614. 2 Atk 511. a certain summ yearly, resg. Legard vs Johnson where the Testator did the court decree a money by the wife, & case 2 & 3 where a contr. of 3d kind was sustained in a Ct of Law.

Then contr. to Lawyer will not be inforced as other contr. are, but is deliv. to whom the Bond &c shall not be assigned as the mon. & shall not be had agt the Assd by the Instrument of Cancellation.

If a Lord is given by A. to his intended wife con. to perform certain marriage articles or to make a certain settlement, how far if they are married the L. the will it binds him, as all the world knows his. — But Ch. would not allow him to do this, but they consider it Lord as a contr. — Indeed this is the character of all Lords to perform contr. — But in this case Ch. controlled the performance, — for the Limits is no part of the contr. 2 Ves 480. 1 Pow C. 444. 2 id 251. 1 Fonb 139. 4. P. W. 243. 2 Atk 99. 2 Pow C. 17. 2 Vern 151.

But now suppose the Lord had been entered into before marriage to pay a certain sum after his death. Qu. can the wife recover at Law agt the Exec. It was contended for a long time that it was not liable for Debt was no Pell Exp. Watts. Indeed the Case must be decided as Ch. while that the Judge differed with him & decided that it might be sustained at Law if so & as Ch.

Ex. case more often Holt Ld. C. agreed with Holt
& the two other Judges disputed as before — Holt never
doubt it — the case was ag? L. Mansfield Ld. Just.
& the Ct were unanimous that the two former
decisions were correct. & that the act? could be main-
tained at Law

Ld C. J. Raymond the Power of recovering
the specific performance of an award, that is when
the award is to be a collateral act. but not to
pay money for in that case an act? will lie on the
award & the remedy is adequate, unless not al-
ways the case when the award is to do a collateral act

But it is said Ld C. J. Lee gave no opinion upon the
performance of an award which was illegal, but that is
not true Ld C. J. will never decree the performance of
an award which is illegal & not to be performed, but
this is when the deft agrees to comply with the
specific award, & detriment arises to Pltff in conse-
quence of the non compliance, but then Ld C. J. goes
on the promise & not upon the award. as
known but that case of 30 W. 3. 2 Vern
24.

It is agreed that they will decree performance of
agreements respecting real property & will not as to
personal property but in matter of these cases
is the rule universal, but it admits where a
specific relief of the thing an adequate remedy at Law
they will not decree performance of agreements
respecting personal property because, they usually require payment of money, &

for

for, there is an adequate remedy at law but if the agreement was to sell a ditch, Eq. will decree specific performance.

In case of the 2d, where the agreement was to purchase a large quantity of timber & to pay for in eight years instalments. Now here if the case is settled at law it will be necessary to bring an action on the failure of each instalment. But in Eq. they decree the payment of the whole debt on failure of pay. of the first instalment. This was because the Ct. thot. that the remedy at law in a case of so much magnitude was not an adequate one.

A gives a bond to B, & C is the surety. Now if the bond is not fulfilled, Eq. will support a bill brot. by the surety to compell the principal to pay. This is on the principle that it is unreasonable that the surety should be obliged to pay that wh. it was the duty of prin. to pay.

In another set of cases, there remains an absolute uncertainty in consequence of the contrariety of opinion of Ct. contracts with B. to procure his wife B. to join with him in the conveyance of her lands — & he does not succeed to get her to join him, &c. Now land on contracts when are the various opinions. Now if there is a remedy at law Eq. can not for the reason. In first cases held that the party is bound on the ground that the contract was voluntary on the part of the husband. Subsequent cases held

the matter. Now the rule of law being diff.
in this county from what it is in Eng.d as to
the concg of the wife it ought only to be a question
of magnitude with us. In Eng.d she can con-
vey only by fine. If there she is privately exam-
ined as to her will about conveg.e & if she is
reluctant, the Ct will not accept the fine,
how if this conv.e of the husb.d is enforced, it
looks an indecency upon this remote quiet
& the wife, for then tho' she may be reluctant
about conveg.e she will not dare appear to the
convey.e & save her husb.d from ruin. How
in those States where she is privately examined
this objection lies. But there are but a few
of these States where this will obtain, for those
states wh have not this rule,

The current of cases, may that the husb.d
could turn it wd be a question extra.

There are other very cases in wh Ct's will
enforce a cont.t wh the Ct of Law will not. e.g.
cch agreem.t is made & abide by the distribution
wh a old Uncle makes of his estate, Ct will
enforce. Will not a Ct of Law do it? How
there is an agreem.t as to a mere possibility, for
the Uncle may not give them any thing, &
if a said Law will not enforce such a cov.t,
this was taken long ago. - But the diff.y
is now got over. - If Law & Equity both will
enforce the agreem.t as to a mere possibility -

But still there is no decision that an estate in mere Capability is a grant to the Heirs. But is the opinion of elementary authors that it is a grant to the Heirs, as it contains Descendants.

The whole doctrine of contingencies is of no effect here

Ag.st A enters into a contract with B that whether that if he will let him have a certain sum of money he will have a certain sum in his Will It is said there can be no recovery now at Law for the Uncle is dead now. But there is an argument as effectual ag.st a decree in Eq.ty as a judgt at Law. & it is agreed that the Decree may be had in Eq.ty.

Ag.st A mat. a person. to B who cannot be performed till the death by the terms of it. Then now there must be by the Ex.rs. The Vermont case of the Son agreeing to pay a portion to his sister provided the Father will take the incumbrance of the sister from off the land. Here the Son was Ex.r But the daughter was allowed to sue the Son as there was no other who could do it. This the justice / Dutton & Pool. 6 Vent. Jr. 118. / of the case reported. It was said however that the relation of the daughter here drew the promise made to the Father to herself. But this is not the true point for the reason intended may be. The Lawyer's a case of promise & vacat all the cases to be found in the Eng books But there case was decided in our Supr.e Ct. not was a case of

of a bond. & the same decision was made &
that it is settled that the action can be sustained by
the party grieved. when the trustee cannot
sue.

Adverse a person to pay of papers wh
he will not deliver up. tho' it is in part han
for him to hold them. Ch. will aid the sur.
under. 9 Mod 29½. 2 Atk 304. 1 Vern 479.
Cts of Law will also give a remedy in this case
but it is in damages. wh is not an adequate
remedy.

Of Rescinding Contracts.

I observed above that Chs will attend to the con-
sciences of the litigant parties, & also that they
never give vindictive damages. — They endeavor to
do justice as near the contt. — & that the juris.
of Chs is in some cases where Cts of Law afford a
remedy & also, when they do not.
Thus if Law an illegal contt. agst. B. Law he
goes to Chs for relief, because there can be no
remedy at Law, & now Law B goes to Chs. because
A may sue after the proof of the illegality
is gone & get the contt. rescinded. — Cts of Law also
abet Law in the application of the principle that
an illegal contract is void. but Law Law is as com-
petent to give relief as Equity as the maxim is
the same in both Cts.
It is a Mot. that contract an affront. to sound
policy are void. Chs Law give a relief, & to the

the maxim is the same at Law they do not regard
how in Mortgage & Bottomry Bonds. Chs will
rescind, Cts of Law will not, tho' say they are ag-
ainst sound policy & nothing about unconscionable matters
do Law gives judgt upon the bond.

Courts of Eq
Finding Circumstances, Chs will not enforce when
the same maxim, as they endeavour to find the
Real Intentions of parties, & prevent the
demoralizing practices. — the Chs will order the
restoration of the money &c? See the allegn
of Mortgr. 2 Vern 394. 2 Ch Ca 34. 1 Ch Ca 354. But
will rescind the bond, Cts of Law ought to do the
same

When a contract partly void & partly
valid & partly entire & it, Chs will
modify the contr, this is the ground upon wh
they regulate Mortgages, where they do not make
contracts for men, but merely restrain them,
Cts of Law do nothing of this kind, & as they
only enforce the contract according to the terms of
it, they never find it necessy for the parties to go
to Chs in all cases of Mortgages. — Chs of Eq
Courts as correct so far as the giving the Security, but
no further, — Chs for this purpose Mtge may get rid
of the Proviso — But Cts of Law will do nothing about
it, Upon the ground Chs will allow Mortgor to
redeem even after the Mortge has been
edgt. If a
contr is made to pay compound interest, it will

be recovered at Law. But if he is allowed to take Compound interest, it is perfectly consonant with justice & amounts to the same thing as if he took it at the interest annually accruing at the rate of interest, & then lent to the obligor as he may do to the same man. But a contract that he may receive compound interest is not void from illegality, like an usurious contract, & he may receive the interest decreed for it annually. The Spanish governing Law is that men are not aware of the nature of the interest it contemplates made the interest of obligee to new obligor of the annual debt.

Chancr will however decree Penal Condo upon the same principle of Policy. Ct of Law might have done this with propriety, but they do not do it. Those Motions made in Eng. allowing Ct of Law to do it, & thus save the inconvenience of going to Ch. in all these cases. The Ch. does not regulate matters upon the ground of making contracts for the parties but merely to restrain them to the principles of Policy.

Ag. If both parties have been mistaken & there was no fraud in contr. made on the three impressions, Ch. will not set aside the contr. or when the Notes are found there was a salt spring upon the land the subject of the contr. Ch. set it aside on the ground that "the minds of the parties did not meet.

mest which is a max^m of all, in contracts. Here
Cts of Law will not give an adequate remedy, as
they will give Damages alone wch will not amount
to a compensation, but I think that the Cts of
Law might have adopted the same notion
as the Equity viz, that the cont was void—
Where a person has entered upon his int. without
a knowledge of his rights, how it is a max^m that
ignorantia Legis non excusat— but this max^m
is not universal, as when A. B & C their brother
D. dies, seised also of Lds in Fee and E. Labors
master and terra. tenedorum— & therefore
it belongd to C the younger. the Chancellor 3 Ch Rep 40
but they divided the land between them. M. filed
his bill as being his exclusive right, & Ch. endeavd
notwithstand^g his ignorance of the law.
Cts of Law in some cases act upon these princ^s
as in the instance of infidel apt. for many years
by misdate—

Cont^s obtained by fraud & force, &
decep. Ch^s will relieve in all cases. Law will in
some, Ch^s goes upon the ground of fraud & nat^e
of the cont^t not being given voluntarily, i.e. Heart
does not arise from his own free will; for
as well as actual force will void the cont^t in
Ch^y so fear will not void it at Law. Case of
the mother obtaining a cont^t from him who was
to be her son in law, not to call her to an acc^t
for her daughter's port^n. Ch^y relieved the youth after
the marriage.

Ch. will set aside a contr. on the ground of want of an Inv. Law will do it also in some cases. It was to be agreed in Sept. that contr. of State who fall within the description of non compos mentis - But Ch. will relieve in case the obligor is of weak mind, i.e. one from whom a contr. could be obtained but no man of sense would make - case of the weak minded son of a nobleman, who gave a bond. - Ch. sets it aside on the ground of fraud arising out of the weak mind, Law would not interfere here.

Intoxication under wch a man destitute of reason grants shall he be bound by his contracts made in such a state? There are no decisions on this point except where the contract was obtained by him who had drawn Oliver into the state of intoxication, & the man was found in drink & had got a bargain out of him. Ch. & Law have never said whether they wd or wd not set it aside but there is a prin. that no contr. shall be enforced wch is obtained from a man who was in a situation not to make it - Rubrick is said on the contra that the Law does not protect a man when drunk - The Rule is true but it does not apply to civil cases, it does not shield him from punishment in case of his committing a crime; but it is said the drunken man had not in his own mind understood & therefore he does differ from Mad.

that of Lunacy. but this is not the true reason but the true reason is the principle of policy & that is to take away the cloak that would screen over the most diabolical malice. but the spirit of policy does not affect to civil cases should render the bankrupt liable to all his reasonable contracts but not to his unreasonable contracts.

obj.: In cases of fraud. But these are remedied in a Ct of Law as well as in Equity but the remedy there given is in damages. so is suff. in cases of personal propy. But in case of real estate, the application to Ct. is the most adequate remedy. Contracts fraudulent in their execution are void as in this so that no action necessary to rescind. as when a man signs one instrument when he thinks he is executing another, in this case no damages to be recovered, but if he is sued he may plead non est factum

But if the fraud is in the consideration, there not void at law tho' damages are there to be recd but ARE rescinded. - for here fraud was the intention of the Dfts. In the Mercantile Law if the fraud is in the consid: the contr: is void & there can be no recovery upon it. —

But the Law here does not appear to be right. for it did that the contract with a fraudulent consid: as void. the Plaintiff chose to be into united a saddle horse, & the horse as a good saddle horse. now the law is good for nothing except for traffic as he did.

did not want the 6 cents \$50. & the rule of Damages in this case is the diff between the real value of the Horse & that rule he gave for him & no more ought to B. but the contract did he annulled.

And so agn in the famous case of y^e sale a horse for as much oye as a^d acre by the rule of permutation from one to thirty two the R^o of nails in the shoes — this contr^t did have been rescinded on the ground of fraud practised on the ignorance of allegor

When a piece of swindling is committed by means of false tokens. And on the part of the Law I mean contracts entirely in some cases where no title is in existence of vacating them in all.?

Fraud upon a third person is void under the contr^t said in Equity As in a case of a Marriage contract when the father of the Groom was induced to make a settlement upon his son & induce the father of the bride to make a settlement upon his daughter, the bride father took a bond from his son to pay him a sum. The Son died & title is claimed upon the bond by his father. & the Ch^r decreed on the groun^d of the fraud as y^t the sec^d father.

The principle which governs in all these cases of fraud is the misunderstanding arising from the misconduct of one of the parties, Upon this principle Ch^y goes a great way in rescinding contracts, & this they do as well when there is a concealment as a false deal? Case of a release obtained by concealment of facts, It was

was less fraudulent in Eq.ty 1 Ves. 209.

In the L.t Ver. there is no need of Eq.ty for by that Law the Court would set aside a contract in a Court of Law—Lee of Pinsent & Ano.s gives no notice at the time that the usual when last heard of was making 2 Ves. 109. Sale Lands at the Sunnyside.

It has been a question of Law whether a unfair advantage cannot be inferred from the circumstances of the contract; & it seems that it may be inferred from inadequacy of price this is Lord Thurlows opinion; the only enquiry the Court will be made is, whether any thing in the 2 Ves. 79. case will render it probable such a bargain could have been made & no unfair advantage been taken.?

In Cases of Usury. all that Eq.ty does is to strike out all above the principal & lawful interest. But why does Eq.ty Law differ from Law? why do they not destroy root & branch? This in consequence of the maxim governing in those Cts. that taking away the principal is done in the nature of a penalty inflicted upon the Creditor & the Law makes use of the debtor to inflict it not to execute the rule of Eq.ty never to inflict a penalty Again Eq.ty can never consistently with this principle grant relief unless the parties are put in the same situation they were before the contract made; the inflicting the penalty is not putting the parties in the situation, but Court must have the interest lawful

There is where the money consists alone in
nothing more than lawful interest, the Court
on the face of it is so unconscionable. & Equity
will not do till the day of payment arrive & then
Lend its aid to assist in having the usury. Now
here the contract cannot be rescinded, the fault
is in the taking, & in this case Ch. will
not put the onus upon the conscience, which the
mag.ty that Ch. will never compell a confession
will never put the party making it; in proper
when the note itself is usurious, they will
compell the confession, for here no penalty is
inflicted as is done in the other case. / with
the Dutch Bargain. La Chesterfield Law when
will be found all the Law /

In case of a sale
of goods, by a person deriving title
& capable to bargain money
& Equity will relieve. In this case
the bargain / tho Ch. 149 / is considered as fraudu-
lent as the bargain is such a one not have been made
by a person in sound circumstances. —

Ch. Ab. Also in case of unequal
bargain, not been rescinded in Ch. — The
point is when unreasonableness of the bargain.
Also in cases of bargain between Parent & Child
Guard. & Wards, the ground is the unproper influence
that rendered a person an unreasonable bargain from
the Child. Bac. Ab. 693. 1 Dey. 402. 1 Vern 237. Ld. Talbot Cas.
111.

Contracts made with Sailors, not are unreasonable

have been rescinded. This on the ground of their thoughtlessness. The Chancellor says he took the character of the Party & Sailor into consideration. The contract is fraudulent. 1 Vesey 29

Trustee in Ch.
A Trustee is compellable to execute the trust reposed in him whether the trust be of real or personal property, and it is no matter how little the Trustee is at law the entire property may go into Ch. & compell the performance

If a man appointed Executor refused the trust Ch. will appoint another in his stead & take all the incidents of that character.

Ch. will not decree the sale of an Equity of redemption for the benefit of Creditors of mortgagor. In this case the Lien between the Eq. of redemption descends or devises & Executor for the Creditors & also for the Legatees

Every Lien in a Trustee for the Legatee &c. and if a bond conveyance is made by A to B for the benefit of C. the legal title is in B but the equitable is in C. Ch. will compell B. to convey to C. at the time stipulated

There is but one case in which the entire property in trust is liable to lose the estate. It is when the trustee sells the land to a bona fide purchaser, who was ignorant of the trust, this purchaser will hold the land & the entire property in trust is lost to the

remedy over. Part of this question is important to this country, It is required in most of the States that all conveyances be recorded, & when a deed of trust is recorded it is very questionable whether the cestuy que trust can loose his land. The record of the deed is constructive notice

& that may be proved by proving facts, tho the terms of it can be proved by no other than parol testimony; The case is analogous to the case of Mortgages as absolute deed was given as a security. 2 Rand. 6255. Saund. Ch. 65. 1 Vern 256, 1 Atk 385. 2 Ch 150. 1 Ambler 409. Talbot. Ca. 61.

There is a class of cases in which persons are considered as trustees in Equity when they are not so deemed in Law, as if A died owing B a debt & now appears the heir sells the land & pays all the debts & he has 1000 ℔ remaining. There was no residuary legatee, if there had been he would have taken it as Law trustee says the ℔s 1000 belongs to B. Qu. contra, But it must go to those persons to whom the land would have gone had it not been sold, thus being a resulting trust.

Qy? If a man is made Ex. the Law devises him to pay the debts & legacies in the usual Manner, & the residue, there being no residuary legatee, but E. does not give the Ex. of said man if he has a legacy left him, for they consider this legacy

was given to Eq. as a compensation for its remedy
where the Party destitute the residuum, according
to the L. i.e. to those persons to whom it would
have gone had there been no Will. But the
Equitable presumption may be rebutted by parol
testimony in favour of the Legal presumption, but
the Legal can never be rebutted in favour of the
equitable construction, by parol testimony. —
Note it was the true reason of the Deft's Counsel
Rule of Law & of equity is that there ought not
to form of action by which this presumption
at Law is recovered of the Executor, — but this
defect is now remedied by the action of Ind debitatus
assumpsit. Attempts can be no reason why this
could not be recovered at Law.